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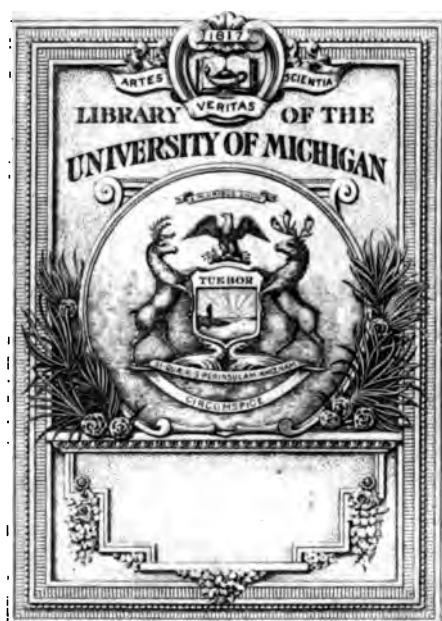
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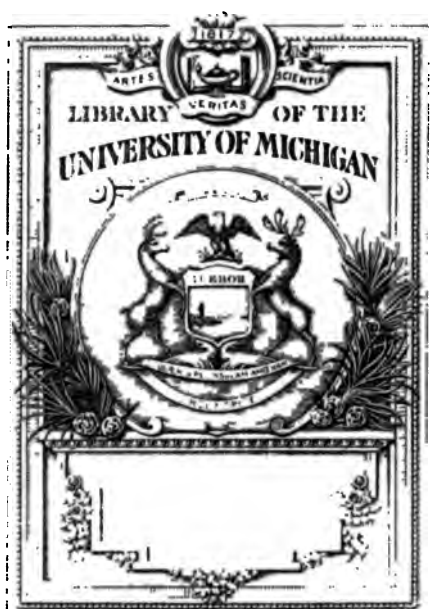
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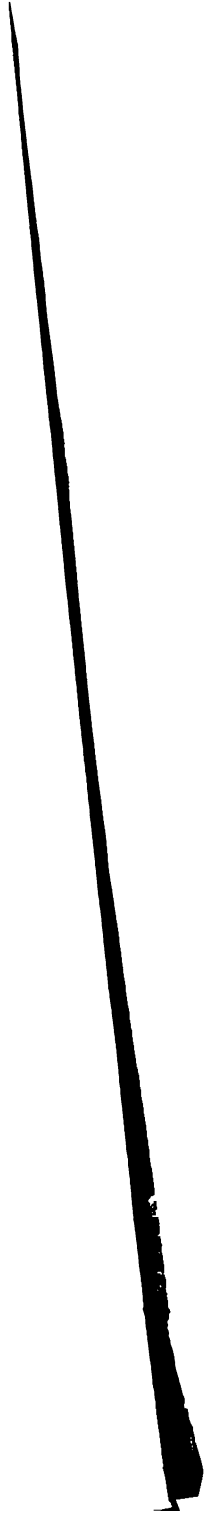
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1822

COMPENDIUM
OF THE
LAW OF NATIONS,

FOUNDED ON THE
TREATIES AND CUSTOMS

OF THE
MODERN NATIONS OF EUROPE:

TO WHICH IS ADDED,
A COMPLETE LIST
OF ALL THE
TREATIES, CONVENTIONS, COMPACTS, DECLARATIONS, &c.
FROM
THE YEAR 1731 TO 1788, INCLUSIVE, INDICATING THE
SEVERAL WORKS IN WHICH THEY ARE TO BE FOUND.

By G. F. VON MARTENS,
Professor of Public Law in the University of Göttingen.

Translated, and the List of Treaties, &c. brought down to June, 1802,
By WILLIAM COBBETT.

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DEDICATION.

TO

JOHN PENN, Esq.

SIR,

IN taking up this work to prepare it for an English edition, my mind involuntarily rushes back to the time and the place, when and where it first engaged my attention; and, by an association of ideas perfectly natural, I am led, from reflecting on the present state of the once tranquil and happy PENNSYLVANIA, to trace down the virtues of its wise and benevolent Founder to him who ought also to have inherited his domains. To you, therefore, Sir, I take the liberty of presenting this book, as the fruit of labour prosecuted in the country of your great and

pious ancestor, and as an humble mark of that respect which, in common with all those who have the honour to know you, I entertain for your talents, your public spirit, and, above all, for your ardent and steady attachment to the Established Church and the sacred person of the King.

I am, SIR,

Your most humble,

and most obedient servant,

WM. COBBETT.

Pall-Mall,
4th June, 1802.

ADVERTISEMENT.

A FRENCH copy of this work was received in America in the year 1794. It came into the hands of the government, who, impressed with a high opinion of its utility, were very anxious that it should obtain a general circulation, for which purpose it was necessary that it should be translated into English, a task which it happened to fall to my lot to discharge. The translation met with great success. The President, the Vice-President, and every member of the Congress became subscribers to it; and, I believe, there are few law-libraries in the United States, in which it is not to be found. The merit of a correct translator is of a nature so very humble, that I scruple not to lay claim to it; and the List of Treaties, &c. at the close of the volume, is, I am fully persuaded, the most ample, the most accurate, and of course, the most useful, that is to be met with in any work whatever.

WM. COBBETT.

Pall-Mall,
4th June, 1802.

AUTHOR'S PREFACE.

ABOUT three years ago, I published, in Latin, an *Essay on the Law of Nations*. I was not unaware of the imperfections of that work, but certain circumstances hindered me from giving it a careful review, before it went to the press; and, owing to my absence, it even missed the corrections it might have received while under impression. Having, ever since, devoted my time to this study, to which I was called both by duty and inclination, I have found a great deal to correct, and much more to add to what I had already said; particularly on the subject of precedence, commerce, and embassies: so that what I here offer to the public, is rather a new work than a translation of the former one.

The order in which I distributed the matter contained in the first work, has been almost entirely preserved, except that several chapters have been added to the third and seventh books.

The general plan of the work is as follows: as a natural and necessary introduction to the examination of the laws that the treaties and customs of Europeans have established among them, I have taken a view of the different nations of which Europe is composed; and, after having shewn in what light they may be looked upon as parts of a whole, have considered them under the different points of view in which they are placed by their dignity, power, constitutions, and religion.

Then, in coming to those rights which constitute the object of the science, I have found three principal questions to be resolved; to wit: 1. What is the basis of the positive Law of Nations? 2. What are the rights it is intended to secure? 3. How may a people lose those rights, when once acquired?

The first of these questions has led me to speak of treaties, of rights tacitly acknowledged, or established by custom, and to examine how far prescription may be considered as giving a positive or natural right.

The second question has required a more ample answer. I have therefore been obliged to divide the rights spoken of into such as concern the interest of nations and those of their sovereigns, and such as have
a relation

a relation to the means employed by the different powers in treating with each other.

Every nation is interested in its external as well as its internal affairs. With respect to the latter, I have observed on the right that a nation has on its own territory; and with respect to the former, I have shewn what are the rights of one nation in matters concerning the constitution of another, and how far it has a right to intermeddle in the disputes that may arise on the choice of a sovereign for another state; and then I have treated of the power that a nation may think proper to put into the hands of its sovereign. After which, I have entered into the particulars concerning the principal rights of sovereignty with respect to internal government, and shewn how one power ought to act towards other powers, or their subjects, and the effect that may be produced by such acts of sovereignty.

The object of a correspondence maintained with foreign powers, is the security of the state; this has occasioned me to treat of the equality, liberty, and dignity of states, and of commerce and navigation.

Of the rights which concern the body of a nation, it is necessary to distinguish those which concern the nation in general less than the person of the sovereign,

reign, his family, or his private affairs, of whatever nature they may be ; I have therefore spoken of them separately.

The second principal class of rights, established on custom or tacit acknowledgment, are those which concern the means employed by the different powers in their transactions with each other. These means are of two sorts: amicable and forcible. Amicable means are such as conferences, treaties, and other acts by word of mouth or in writing. Forcible means are reprisals, war, and in general every act of force. Again, with respect to these last, I have been obliged to separate the rights of belligerent powers from those of allied, auxiliary, or neutral ones; and then I have pointed out the manner in which wars are terminated by treaties of peace.

This has left me only the third question, with which I have concluded the subject, to wit: How a nation may lose the rights it has acquired by convention or custom.

If I have, in some instances, exceeded the ordinary limits of a book of this sort, by introducing a great number of examples in the notes, it is because I am persuaded that it will render the work more intelligible, and, consequently more useful. It is certain,
that

that neither these partial examples, nor the detached treaties, often mentioned, are sufficient to prove the universality of a certain custom ; but it is not less certain that they are very useful by way of illustration ; and, besides, it is well known, that, in practice particularly, a single example has often more weight than the most powerful reasoning. I could have very greatly augmented the number of these proofs, if I had not been afraid of swelling this little work to an unreasonable bulk.

Perhaps, I shall be told that I have touched on some points, which, strictly speaking, belong rather to the practice than the theory of this science. The chapter, for instance, on the different instruments, or acts in writing, made use of in diplomatic affairs, is of this number ; however, it is so nearly related to the rights of ceremony and precedence, that I thought it better not to omit it.

MARTENS.

Göttingen, Nov. 1788.

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SUM-



SUMMARY
OF THE
LAW OF NATIONS.

INTRODUCTION.

SECT. 1.

Of the Law of Nations in general.

FROM the time that men began to form themselves into nations, there must necessarily have existed two sorts of rights and obligations for each nation.

1. In the interior of the state, the rights and obligations between the sovereign and his people. These rights taken together, and considered as arising from the notion of the whole nation, form what may be called the *public universal law*; and, considered as founded upon some fundamental law peculiar to a particular state, they form what may be called the *public positive law* of such state. In comparing, then, the public positive law of several states, whose constitutions are more or less alike, for instance, that of the different states of the German Empire, or that of the powers of Europe, we may form, by abstraction, a
B general

general public law of the Germanic States, or the powers of Europe; and of this science the private rights of the princes of Germany, or of Europe, make a part.

2. The second sort of obligations are those which exist between nations. Each nation being considered as a moral being living in a state of nature, the obligations of one nation towards another, are no more than those of individuals, modified and applied to nations; and this is what is called the *natural law of nations*. It is *universal* and *necessary*, because all nations are governed by it, even against their will. This law, according to the distinction between perfect and imperfect, is perfect and external (the law of nations strictly speaking), or else imperfect and internal, by which last is understood the morality of nations.

SECT. 2.

Of the positive Law of Nations.

It is hardly possible that the simple law of nature should be sufficient, even between individuals, and still less between nations, when they come to frequent and carry on commerce with each other. Their common interest obliges them to soften the rigour of the law of nature, to render it more determinate, and to depart from that perfect equality of rights, which must ever, according to the law of nature, be considered as extending itself even to the weakest. These changes take place in virtue of conventions (express or tacit) or
of

of simple custom. The whole of the rights and obligations, * thus established between two nations, form the positive law of nations between them. It is called *positive*, particular, or arbitrary, in opposition to the natural, universal, and necessary law.

SECT. 3,

Proving the Existence of a positive Law of Nations.

ON the example of two nations, all the nations of Europe might, by common consent, make treaties to regulate their different rights; and, then, these general treaties would form a code, which might be called the positive law of nations. But there never yet existed such a general treaty, neither between all the powers of Europe, nor even between the majority of them; in this sense, then, there exists no positive law of nations, and, perhaps, none such ever will exist.

But, on the other hand, it is clear, that what is become a law between two or three, or even the majority, of the powers of Europe, either by treaty or

B 2

from

* Among the conventions between nations, there are some which are reciprocal as to their effect, and others which produce right on one side and obligation on the other; for instance, the partial sovereignty that a nation exercises on the territory of another, sometimes guarantees, &c. These last belong also to the law of nations between two particular nations; but as the law of nations is seldom considered as relating to two nations only, and as, in a treatise of the general law of nations, one cannot too often mention these particulars, the examination of them is generally taken up in treating of the public law of each state.

from custom, can produce neither rights nor obligations among the others. However, by comparing the treaties that the powers of Europe have made with one another, we discover certain principles that have been almost universally adopted by all the powers that have made treaties on the same subject. It is the same with respect to custom : a custom received among the majority of the powers of Europe, particularly among the great powers (when it is not founded upon their particular constitutions), is easily adopted by other powers, as far as it can apply to them ; and, in general, all nations give a certain degree of attention to the customs admitted by others, although it cannot be proved, that they have ever been admitted by themselves. It is true, we cannot say as much of express conventions ; it, nevertheless, often happens, that a treaty, made with such or such a power, serves as a model * for the treaties of the same sort, to be made with other powers ; and, very often, what takes place in one nation in virtue of treaty, is admitted in others as a custom : so that, in many points, the law of nations is founded on treaty in one country and on custom in another.

* The same thing happens in civil law. A commercial regulation, bill of exchange, &c. serves as a model for many others in foreign countries, although they have never been sanctioned by law. Sometimes they even serve to establish a precedent. *See my Programme : von der Existenz eines positiven Europäischen Völkerrechts und dem Nutzen dieser Wissenschaft*, Gottingen, 1787.

SECT.

SECT. 4.

Definition of the positive Law of Nations.

IT is, then, the aggregate of the rights and obligations established among the nations of Europe (or the majority of them), whether by particular but uniform treaties, by tacit convention, or by custom, which form the general positive law of nations*. It is easy to distinguish this part of the public law from the other branches of politics, such, for example, as the *public law* in the strict sense of the term, the *private rights of princes*, or what is properly called *politics, statics, &c.*

SECT. 5.

Of the Epoch to which it is necessary to go back, to begin the Study of the Law of Nations.

WE find some vestiges of a positive law of nations among the ancients, particularly among the Greeks and

B 3

Romans ;

* The law of nations which Baron Wolf has called *voluntary*, and which some other writers have called *modified*, does not appear to form a particular branch of the law of nations ; the principles that these writers deduce from it, may be, in part at least, deduced from the external or internal universal law of nations ; and the rest depend merely on custom and are simply the effect of what a nation owes to itself.

I thought it necessary to confine my title to the *nations of Europe* ; although, *in Europe*, the Turks have, in many respects, rejected the positive law of nations of which I here treat ; and though, *out of Europe*, the United States of America have uniformly adopted it. It is to be understood *a priori*, and it appears preferable to that of, *law of civilized nations*, which is too vague.

Romans; but it is almost useless for us to go back so far. The political situation of Europe is so much changed, since the fifth century in particular, the introduction of the Christian Religion *, and of the hierarchial system and all its important consequences, the invention of gunpowder, the discovery of America and of the passage to the East-Indies, the ever-increasing taste for pomp and luxury, the jealous ambition of powerful states, the multiplication of all sorts of alliances, and the introduction of the custom of sending ambassadors in ordinary, have had such an influence in forming our present law of nations, that, in general, it is necessary to go no further back than the middle centuries of the Christian Era; and, indeed, on many points, no information can be obtained by going further back than the time of Henry the Great, the peace of Westphalia, or even the beginning of the eighteenth century. Sometimes, however, we are obliged to go back to the sixth or seventh century.

SECT. 6.

History of the Law of Nations.

It is, then, in the history of Europe (and of the states of which it is composed) during the last centuries, that we must look for the existing law of nations; and,

* TYCO ROTAM's *Wirkung des Christenthums auf den Zustand der Völker in Europa*, 1775.

and, besides, these histories contain the particulars of the events, which have given rise to the customs of the present day.

SECT. 7.

History of the Science of the Law of Nations.

THE universal law of nations was studied by the ancient philosophers; but they never treated of it as a particular branch of the law of nature. Since them, this science, entirely neglected by the barbarians, and even expressly condemned by many of the fathers of the church*, remained a long time buried under the jargon of the scholastic philosophy. After some feeble essays †, produced in the sixteenth and seventeenth centuries, Hugh Grotius ‡ published his immortal

B 4

work

* See SCHMAUSS *Gesch. des Rechts des Natur*. p. 73. and the following.

† For instance, those of JOHN OLDENDORP (Professor at Marburg, 1587.) *Isagoge juris nat. gent. et civilis* Colon. 1580. N. HEMMINGIUS (Professor at Copenhagen) *apodictia methodus de lege natura*. Wittenberg, 1561. JUST BENEDICT WINKLER, *principiorum juris*, libri 5. Lip. 1615. And particularly ALBERIGUS CENTILIS (born at Mark d'Ancona, and professor at Oxford, 1611,) *de jure belli* 1608, *de jure maris*, *de legationibus*, &c.

‡ (Born at Delft, 1583, counsellor to the Fiscal, 1600. Fiscal of Holland, 1607. Professor at Rotterdam, 1618; and, after many misfortunes, minister from the court of Sweden to that of France, in 1635, where he continued to 1645). The life of GROTIUS is to be found in the translation of his work by BARBEYRAC, and in SCHROCK *Abbildung und Beschreibung berühmter Gelehrten*, vol. 2, p. 257—376. The first edition of his work on war and peace appeared at Paris in 1625. See the other editions, quoted in d'Ompheda's *Litteratur des Völkerrechts*, vol. 2. p. 292. § 127.

work *on peace and war*. In this work are united the principles of the universal law of nations, of the law of nature, and, as far as relates to long-established states, of the positive law of nations. *Grotius* certainly ought to be looked upon as the father of this science. Since him, a crowd of authors have endeavoured to render themselves immortal by his aid, by publishing his work under a variety of forms *, and adding but very little of their own. The works of these writers have, however, had this good effect; they have rendered the study of the law of nature and that of the law of nations much more common than it was. *Hobbes* † found a *Locke* ‡ and a *Cumberland* § to confute him; and Puffen-

* *GROTIUS* has been commented on by J. A. FELDEN, GRASWINKEL, BOECLER, TESMAR, OBRECHT, OSIANDER, ZIEGLAR, GRONOVIVS, SIMON, WAECHTLER, and others. See also BECMANN, *Grotius cum notis variorum*, Frankfort, 1691. His work has been given in abridgement by WILLIAM GROTIUS, G. KULPIS, SCHEFFER, KLENK, VITRIARIUS, and G. P. MULLER. It has been translated into *French* by COURTIN, Paris, 1687, and much better by BARBEYRAC (who has enriched it with his notes), at Amsterdam, 1724. It was translated into *English*, and published at London in 1654, and 1682, in fol. and in 1715, in 8vo. into *Dutch*, and published at Haarlem in 1635, and better in 1705, in 4to.—into *German* by SCHUTZ, 1707, in 4to. and at Frankfort, in 1709, in fol. into *Danish*, *Swedish*, &c.

† THOMAS HOBBS (born at Malmesbury, 1588) *de circa* 1647, *Leviathan*, at London, 1651. fol.

‡ LOCKE *on Civil Government*. See the 2d vol. of his works.

§ CUMBERLAND *de legibus naturalibus commentatio in qua simul refutantur elementa Hobbesii*, at London, 1672. Translated into French by BARBEYRAC, with his notes, and published at Amsterdam, in 1774,

Puffendorff*, Wolf †, Rutherford ‡, and Burlamaqui §, have rendered great services to the science of the universal law of nations.

The study of the positive law of nations has, however, been a good deal neglected since the time of Puffendorff, if we except the works of Zouchace ¶, Textor ¶¶, Gribner*†, Glafey**, Real††, and Vattel ‡‡. These writers have made it their study to illustrate their subject by examples and observations taken from the history of modern times, and, in this respect, their works

* SAMUEL PUFFENDORFF (born 1681, Professor at Heidelberg, and afterwards at Lunden, 1658. After that, privy-counsellor of the Elector of Brandenburg, from 1690 to 1694), *elementa juris naturæ methodo mathematica*, published at Leyden, 1660. *Jus naturæ et gentium*, at Lunden, 1672, of which Mr. Barbeyrac has published a translation, enriched with his notes, 1706. *De officio hominis et civis*, Lunden, 1678; and translated by Barbeyrac, 1707.

† C. DE WOLF (born 1670, Professor at Halle, 1707; at Marbourg, 1723 to 1754), *jus gentium*, at Halle, 1749, 4to.

‡ RUTHERFORTH, *institutes of natural law*, Cambridge, 1754, vol. 1.—2. 8vo.

§ BURLAMAQUI, *droit de la nature et des gens*, Yverdon, 1776. 8vo.

¶ RICHARD ZOUCHER, *juris et judicii feccialis seu juris inter gentes, et questionum de eo explicatio*, Oxford, 1650, 4to. Leyden, 1654. Hague, 1659, 12mo. Mentz, 1661, 12mo. Hague, 1759, 12mo.

¶¶ J. WOLFGANG TEXTOR, *synopsis juris gentium*, Bale, 1680.

*† GRIBNER, *principia juris prud. naturalis*, 1717, 8vo.

** GLAFEY, *Vernunft und Völkerrecht*, Frankfort and Leipsig, 1728 and 1782, 4to.

†† DE REAL, *science de gouvernement*, tome 5.

‡‡ DE VATTEL, *le droit des gens, ou principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains*. London, 1758, 4to. Neufchatel, 1773, 4to. Bale, 1777, tome 1—3. 8vo. Translated into German, Frankfort, 1780, vol. 1.—3. 8vo.

works are more useful than those of the writers who have gone before them.

These authors have drawn their information from treaties, and other public acts; and those persons, who, like Leibnitz *, have published collections of this sort, have paved the way for them. But such collections, as well as the necessary histories, mémoires, &c. are now become so numerous, that one cannot help regretting the want of sufficient pecuniary encouragement. It is astonishing, that a science, in which every order of the state is so much interested as it is in that of the *positive Law of Nations*, should have been so long suffered to remain neglected. It was in a manner forgotten, till MR. MOSER † attempted to form it into a system, in separating it entirely from the universal

* G. W. LEIBNITZ, *codex juris gentium diplomaticus*, Hanover, 1693, fol. mantissa, 1700. fol.

† J. J. MOSER, *Anfangsgründe der Wissenschaft von der heutigen Staatsverfassung von Europa und dem unter dem Europäischen Potenzen üblichen Völker- und allem. Staatsrecht*, Tubing, 1732, 8vo. *Entwurf einer Einleitung zu dem allerneuesten Völkerrecht in Kriegs- und Friedenszeiten*, 1636. See his *Vermächts*, vol. 2. *Grundsätze des jetzt üblichen Europ. Völkerrechts in Friedenszeiten*, 1750, 8vo. *Uem in Kriegszeiten*, 1752, 8vo. *Erste Grundsätze des jetzigen Europäischen Völkerrechts*, Nurnberg, 1778, 8vo. After these works, he undertook another, in a very advanced age, under the title of, *Versuch des neuesten Europäischen Völkerrechts vornemlich aus den Staatshandlungen seit*, 1740, vol. 1, 1777. vol. 10. and last, at Frankfort, 1780. 8vo, to which he began to add supplements: *Beiträge zu dem neuesten Europ. Völkerrecht in Friedenszeiten*, vol. 1. 1778. vol. 2. 1780. And *Beiträge zu dem neuesten Europ. Völkerrecht in Kriegszeiten*, vol. 1. 1779. vol. 2. 1781. Death hindered him from finishing these supplements.

versal law of nations. Since this writer, several others* have treated the subject, some with more, and others with less success.

SECT. 8.

Books necessary to those who study the Law of Nations.

To form an useful library for the studying of the positive law of nations, the following classes of books are indispensably necessary: 1. All the collections of treaties. 2. Collections of other public acts. 3. Collections of political journals. 4. The most extensive works on national and universal history. 5. Mémoires of embassies. 6. Some biographical works. 7. The several systems and summaries on the universal law of nations, ancient and modern. 8. Several miscellaneous works on the law of nations. 9. A number of dissertations and detached deductions. 10. And, above all, all the regular treatises on this science.

LIST

* G. ACHENWALL, *juris gentium Europ. practici prima linea*. The author died before his work was finished. *Précis du droit des gens par le Vicomte de La MAIDLARDIERE*, in his *Bibliothèque Politique*, vol. 1. P. J. NEYRON, *Principes du droit des gens Européens, conventionnel et coutumier*, Brunswick, 1783, vol. 1. 8vo. C. G. GUNTHER, *Grundriss eines Europ. Völkerrechts*, Rogensburg, 1777, 8vo. Idem, *Europäisches Völkerrecht in Friedenszeiten*, 1. Theil. 1787. 8vo. A continuation of this excellent work is much to be desired.

**LIST OF THE MOST APPROVED WORKS OF
EACH CLASS.**

FIRST CLASS.

*General Collections of Treaties between the different
Powers of Europe.*

RECUEIL de Traités de Paix, de Trêve, &c. depuis
la Naissance de Jésus Christ, jusqu'à présent ;
à Amsterdam et à la Haye, 1700. tome 1—4.
fol.

J. du Mont, Corps universel diplomatique du Droit
des Gens ; Amsterdam et à la Haye, 1726 &
1731. T. 1—8. fol. avec les Supplémens de
Rousset, à Amsterdam et à la Haye, 1739. tome
1—5. fol.

Fred. Aug. Guil. Wenk, Codex juris gentium recentis-
simi, Leips. 1781. 8vo. vol. 2.

Robinet, Dictionnaire universel des Sciences morales,
économique, politique et diplomatique ; ou Bi-
bliothèque de l'Homme d'Etat et du Citoyen ; à
Paris, tome 1. 1777. tome 31. 1787. 4to.

J. J. Schmauss, Corpus juris gentium, Lips. 1730,
and the following years. tome 1—2. 8vo.

*Collections of Treaties made between one Nation and
the others.*

For Germany.

Lunig, Reichsarchiv Leipzig, 1710—1722. 24 vol.
in folio.

J. J.

J. J. Shmauss (in part), *Corpus juris publici*, Lips.
1774. 8vo.

For France.

Recueil de Traités de Paix, de Trêve, &c. faits par
les Rois de France, avec tous les Princes d'Europe
depuis près de trois Siècles, par Fr. Leonhard, à
Paris, 1693. 6 vol. 4to.

For Spain.

Collecion de los tratados, &c. hechos por los pueblos,
reyes y principes de Espanna, por Joseph Antonio
de Abreu y Bortodano; Madrid, 1740—1752.
fol. Under Phillip III. 2 vol. Under Phillip IV.
7 vol. Under Charles II. 3 vol.

For Great-Britain.

Thomæ Rymer, *Fœdera Conventiones*, &c. inter reges
Angliæ et quosius Imp. reges, &c. London, 1704,
and the following years. 20 vol. in fol.

A general Collection of Treaties of Peace and Com-
merce, &c. London, 4 vol. 8vo. 1648—1731.

Jenkinson, Collection of all the Treaties between Great-
Britain and other Powers; the newest edition ap-
peared in London in 1783. 3 vol. 8vo.

For Poland.

(Dogiel) *Codex diplomaticus regni Poloniæ et M.
Ducatus Lithuanix in quo pacta fœdera, tractatus
Pacis,*

Pacis, &c. continentur. Vilnæ, vol. 1. 1758, vol. 4. 1759. vol. 5, 1764, fol.

For Sweden.

G. R. Modee, Utdrag af de emellan Hans Konglige Majetaet och Cronan Suerige a ena och utrikes Magter a andra siden sedan, 1718. slutna alliance Tractatet och af handlingar, Stockholm, 1761. 4to.

For the United Provinces.

Recueil von de Tractaxten tusschen de H. M. S. G. ende verscheide Koningen, &c. item: Vervolg van het Recueil, 2 vol. 4to. 1576—1784, published by Sheltus, bookseller.

The following work may be made use of to great advantage as a sort of index to the treaties :

Regesta chronologico-diplomatica, by P. Georgisch ; Halle, 1740—1744. vol 1—4, fol,

SECOND CLASS.

Collections of other public Acts.

Particularly such collections as those that have been made for the peace of Westphalia, by **MR. MYERN**, for that of the Pyrenees, of Oliva, of Nimwegen, of Ryswick, of Utrecht, of Bade, of Belgrade, of Aix-la-Chapelle, &c. by different authors.

See

See also the catalogue of MR. d'OMTEBA, *Litteratur*, &c. vol. 2. § 179, and the following. There are some collections of this kind that deserve particular notice; such as,

Lamberty, Mémoires pour servir à l'Histoire du 18^{ème} Siècle, contenant les Négociations, Traités, &c. concernant les Affaires d'Etat, à la Haye, 1724, tome 1—24. 4to.

Recueil historique d'Actes, Négociations, &c. depuis la Paix d'Utrecht jusqu'à présent, par Roussel, Amsterdam, 1728—1752. tome 1—21. 8vo.

Sammlung einiger Staatschriften nach Carl. VI. Ableben, 1741—1743. tome 1—4. 8vo. Unter Carl. VII. 1744—1747. vol. 1—3. 8vo. Unter Franz. I. 1749—1754. Vol. 1—8. 8vo.

Teutsche Kriegscanzeley seit, 1756. vol. 1—18. 4to.

A Fabri, Europ. Staatscanzely, 1697—1760. vol. 1—115.

Neue Europ. Staatscanzely, 1760—1782. vol. 1—55. 8vo.

THIRD CLASS.

Collections of political Journals.

Theatrum Europæum, 1617—1718.

Diarium Europæum, 1659—1683.

Europäische Fama. Die neue Europäische Fama.

Le Mercure historique et politique de la Haye, 1686—Avril, 1782, 187. vol. 12.

Genealogisch

- Genealogisch hist. Nachrichten, 1739—1750.**
Neue genealog. hist. Nachrichten, 1750—1762.
Fortgesetze, neue gen. hist. Nachrichten, 1762—1777.
Neueste Staatsbegebenheiten, 1776—1782.
Politisches Journal, 1781.
J. G. Meusel, Bibliotheca Historica, vol. 1. p. 1. p. 162,
and the following.

FOURTH CLASS.

Works on national and universal History.

- Meusel, Bibliotheca Historica, vol. 1—3, 1782, and the**
following.
Mably, Droit public de l'Europe.
Busch, Grundrifs einer Gesch. der neuesten Welthän-
dal, second edition, Hamburg, 1783. 8vo.

FIFTH CLASS.

Mémoires of Embassies.

Of the crowd of works, which have appeared under the title of *Mémoires*, I shall mention here, such only as contain an historical account of some embassy, or a collection of the memorandums, dispatches, &c. of some ambassador, chronologically arranged.

- Mémoires et Instructions pour les Ambassadeurs, ou**
Lettres et Négociations de Walsingham. Amster-
dam, 1700, 4to.

Mémoires

- Mémoires de Monsr. de Bellievre, et de Sillery, sur la paix de Vervins; 1677. 2 vol.
- Lettres du Cardinal d'Ossat, à Paris, 1627. fol. ensuite avec les notes d'Amelot de la Houssaye, à Amsterdam, 1732. tome 1.—5. 8vo.
- Négociations du Président Jeannin, à Paris, 1656. fol.
- Mémoires de Max. de Bethune, Duc de Sully, à Londres, 1747. tome 1.—3. 4to.
- Ambassades de Monsr. de la Boderie en Angleterre, 1750. 5. vol.
- Du Perron, Ambassades et Négociations, à Paris, 1623—1715. fol.
- Ambassades de Monsr. le Duc d'Angoulême, par le Comte de Bethune, Paris, 1667. fol.
- Lettres et Négociations du Marquis de Feuquieres, à Amst. 1753. tome 1—3. 8vo.
- Négociations à la cour de Rome, etc. Messire Henri Arnauld, 1748. tome 1.—5. 8vo.
- Négociations secrètes touchant la Paix de Munster et d'Osnaburg, à la Haye, 1725, et suiv. tome 1—4. fol.
- Mémoires de Chanut, Ambassadeur en Suède, 1649—1652.
- Lettres du Cardinal Mazarin, où l'on fait voir le Secret des Négociations de la Paix des Pyrenées, Paris, 1690. 12mo.
- Lettres du Chevalier Temple, à la Haye, 1700. 12mo.
- Lettres du Comte d'Arlington, à Utrecht, 1791.
- Lettres, Mémoires, et Négociations du Comte d'Estades, à Londres, 1743. tome 1—9. 12mo.

- Négociations du Comte d'Avaux en Hollande, depuis 1679—1687. Paris, 1752. tome 1—6. 8vo.
- Lettres et Négociations de Mr. Jean de Witt, à Amst, 1725. 8vo. tome 1—5.
- De Torcy, Mémoires pour servir à l'Histoire des Négociations, depuis le Traité de Ryswick jusqu'à la Paix d'Utrecht, à la Haye (Paris), 1756. tome 1—3. 12mo. Londres, 1757. tome 1—4. 12mo.
- Mémoires du Comte de Harrach par Monsr. de la Torre, tome 1—2. 12mo.
- Mémoires de diverses Cours de l'Europe, par Mr. de la Torre, à la Haye, 1721. tome 1—5. 12mo.
- Mémoires de l'Abbé Montgon, 1750. et suiv. tome 1—8 12mo.
- Langier, Histoire des Négociations pour la Paix de Belgrade, 1763. tome 1—2. 8vo.

SIXTH CLASS.

Biographical Works.

- Puffendorff, res gestæ Caroli Gustavi, Frederici Wilhelmi, Berlin, 1695, fol.
- Wilhelmi III.
- Nordberg, Histoire de Charles XII. à la Haye, 1742—1748. tome 1—4. 4to.
- Campbell, Lives of the British Admirals and other Seamen, London, 1750. vol. 1—4. translated into German, Gottingen, 1775. vol. 1—2. 4to.

SEVENTH

SEVENTH CLASS.

Systems and summaries on the universal law of nations, such as those of Grotius, Puffendorff, de Real, Vattel, Moser, Grunther, &c. See the preceding Section, also,

J. F. L. Schrodtt, *Systema juris gentium quod sub directoratu F. W. S. de Cronfeldt publicæ disputationi submittit*, A. comes Czemen de Chudenitz, Præge, 1768. 4to.

EIGHTH CLASS.

Miscellaneous Works on the Law of Nations.

Bynkershoek, *questiones juris publici*, vol. 1—2, 1737. 4to.

H. de Cocceii, *exercitationes curiosæ*, vol. 1—2, 4to. Lemgor, 1722.

N. Hertii, *opuscula*, vol. 1—2 4to. Frankfort, 1737.

J. J. Moser, *vermischte Abhandlungen aus dem Europ. Völkerrecht*, Hanau, 1750. 8vo.

F. C. Moser, *Kleine Schriften*, Frankfort, 1751. vol. 1—12. 8vo.

The same. *Beiträge zum Europäischen Staats und Völkerrecht*. vol. 1—4. 1764—1772. 8vo.

J. C. G. de Steck, many pieces under the title of, *Versuche, Aausführungen, Essais, Eclaircissements*, &c. 1772, and the following.

D. Nettleblatt, *Erörterungen einiger Lehren des Staatsrechts*, Halle, 1773, 8vo.

NINTH CLASS.

Dissertations and detached Deductions.

See Lippentii, *bibliotheca juridicæ realis*, with the supplements of Schott.

See also Meister, *bibliotheca juris naturæ et gentium*.

TENTH CLASS.

The regular Treatises on this Science.

A. F. Glafey, *Geschichte des Rechts der Vernunft nebst einer bibliotheca juris nat. et gentium*. Leipzig. 1739. 4to.

J. F. W. de Neumann, *bibliotheca juris imperantium quadripartita*, Nuremburg, 1727. 4to.

C. F. G. Meister, *bibliotheca juris nat. et gentium*, Göttingen, 1749. vol. 1—3.

D. H. L. Baron d'Ompeda, *Litteratur des gesamten sowohl natürlichen als positiven Völkerrechts*, Regensburg, 1785. vol. 1—2. 8vo.

SECT.

SECT. 9.

Order of the Work.

BEFORE we enter into particulars on the rights and obligations which form the object of this science, it is necessary to examine with the utmost care, what are the nations whose rights we are to speak of; and to see how far Europe, separated from the other nations of the universe, may be considered as a whole, and how the states which compose this whole differ from each other, particularly in strength, constitution, and religion.



B O O K I.

OF THE STATES OF EUROPE IN GENERAL.

C H A P. I.

OF THE STATES OF WHICH EUROPE IS COMPOSED.

SECT. 1.

Of the different Degrees of Sovereignty.

UPON a view of the states of which Europe is composed, we see, that there are some which are entirely free and sovereign, and others, which, though they do not pretend to an entire sovereignty, ought nevertheless, to be considered as immediate members of the society of European nations. For a state to be entirely free and sovereign, it must govern itself, and acknowledge no legislative superior but God. Every thing which is compatible with this independence, is also compatible with sovereignty, so that mere alliances of

protection,* tribute,† or vassalage,‡ which a state may contract with another, do not hinder it from continuing perfectly sovereign, or from being looked upon as occupying its usual place on the great theatre of Europe. The limits or power of a state can make nothing with respect to its sovereignty, if it be totally independant, it is sovereign. ¶ All subordinate corps, on the contrary (whether communities, cities, or provinces) which, forming but a part of a greater corps, and which, consequently, do not enjoy an entire independence, are represented mediately by their sovereign,

* Thus the republic of Ragusa is a sovereign state, though under the protection of the Grand Turk and some other powers. The principalities of Monaco and Bouillon are also sovereign, though under the protection of the King of France.

† At present there is no state in Europe that can be properly called *tributary*, though the princes of Moldavia and Wallachia pay certain sums annually to the Grand Turk, and though the presents that many of the other European powers make to the barbarians of Africa approach pretty near to the idea we have of a tribute.

‡ The King of Naples, for example, is the sovereign of his dominions, though he has held them as vassal of the Pope, ever since the eleventh century, and though he takes a pretty strict oath of fealty to him, as may be seen by the form of it. See MR. LE BRÉT, *Parlemens über die Statistik*, vol. 2. p. 347.

The Order of Malta, also, is ever looked on as a sovereign power, though it has acknowledged the King of Sicily as its liege lord, since the year 1520.

¶ The distinction that the late MR. DE LEIBNITZ has made between the sovereignty of great and that of little states (*suprematus et potentatus*), does not seem admissible in theory. It is founded in fact, but not in law. See, however, his treatise, entitled *Cesarini Furibundii suprematus principium*, cap. 12.

reign, in all transactions with foreign powers. It may and does happen, however, that the different members of *composed* states acquire a right, not only of governing solely in their own internal affairs, but of treating, of their own accord, with foreign powers; provided always that they adhere to the restrictions that their bonds of union and submission impose. Such members of states have, then, a right to treat each other, and to be treated by other powers, as independent states; and ought to be looked upon as immediate members of the society of sovereign states. Nevertheless, their sovereignty not being entire, has given rise to the distinction of *sovereign* and *demi-sovereign* states; but, as the law of nations, with some few restrictions excepted, applies to the latter in the same manner as to the former, they must both be regarded as the *subject* of the science of the European positive law of nations. The number of sovereign and demi-sovereign states, in Europe, has varied at different epochs. Sometimes it has been augmented by the division of a state into two, or more, or by revolutions ending in the independence of some subjected part of a state: at other times the number has been diminished by the union (often caused by the extinction of families) of many states in one.

SECT. 2.

Of the general Connection between the Nations of Europe.

THERE was no general connection existing between the states of Europe, till the Romans, in endeavouring

decavouring to make themselves masters of the world, had brought the greatest part of the European states under their dominion. From that time there necessarily existed a sort of connection between them; and this connection was strengthened by the famous decree of Caracalla, by the adoption of the Romish laws, and by the influence of the Christian Religion, which introduced itself insensibly into almost all the subdued states. After the destruction of the Empire of the West, the hierarchial system naturally led the several Christian states to consider themselves, in ecclesiastical matters, as unequal members of one great society. Besides, the immoderate ascendant that the Bishop of Rome had the address to obtain, as spiritual chief of the Church, and his making the Emperor to be considered as its temporal chief, brought such an accession of authority to the latter, that most of the nations of Europe showed, for some ages, so great a deference for the Emperor, that, in many respects, Europe seemed to form but one society, consisting of unequal members, and subject to one sovereign. This order of things remained, till the different powers, perceiving that their rights were violated, shook off the yoke of the Pope, or diminished his power, and reduced all the prerogatives that the Emperor enjoyed over other crowned heads to the mere point of precedence. Since this epoch, there has subsisted no *general* unequal connection ~~between~~ the powers of Europe, either in spiritual or temporal affairs. A small exception might indeed be made, with respect to spiritual affairs, between those states which remain in the bosom of the
Romish

Romish Church ; but as to temporal affairs, every sovereign state enjoys an equal degree of independence. However, the resemblance in manners and religion, the intercourse of commerce, the frequency of treaties of all sorts, and the ties of blood between sovereigns, have so multiplied the relations between each particular state and the rest, that one may consider Europe (particularly the Christian states of it *) as a society of nations and states, each of which has its laws, its customs, and its maxims, but which it cannot put in execution without observing a great deal of delicacy towards the rest of the society. There exist, moreover, particular relations between some members of this society, which bring them, more or less, near to each other. Some states are held together by equal connections ; as where several states belong to the same sovereign, or where there exists a perpetual treaty, in virtue of which a particular system is established between states. The connections between others are unequal, such

* The connection between the Ottoman Empire and the Christian states of Europe is much less general, and more feeble in many respects, than that which subsists between the greatest part of the Christian states. —We may compare this society of European powers to a people before they form themselves into a state ; that is to say, before they acknowledge any sovereign power over them. The states of Europe need then make but one step, to advance from the natural to the civil state, and to form themselves into an universal monarchy or republic ; but this step they will never make. Such, however, is the project of universal monarchy imputed to Henry IV. and revived by the Abbé de St. Pierre. See J. J. ROUSSEAU, *extrait du projet d'une paix perpétuelle*. Also EMBLER, *Abgöttery unsers philosophischen Jahrhunderts* ; erster Abgott ; ewiger Friede. Mannheim, 1779. 8vo.

such as those existing between Catholic states, in spiritual matters, or between the several members of a *composed* state: and there are other states which have neither treaties nor commerce with each other. In short, these relations are almost as various, as are the conditions of the particular states relative to their power and constitutions.

CHAP II.

OF THE STATES OF EUROPE, CLASSED ACCORDING
TO THEIR DIGNITY, POWER, &c.

SECT. 1.

Of the Division of States into Great and Little.

To have a just idea of the states of which Europe is composed, we must not only distinguish those which are absolutely sovereign from those which are but demi-sovereign, or, at least, whose sovereignty admits of dispute; but it is necessary to distinguish farther, those which are entitled to royal honours, and which are commonly enough called *great states*,* from those which

* In any other sense, this division of states into *great* and *little*, which Mr. J. J. Moser appears to have introduced, is altogether arbitrary

which are not entitled to such honours, and which, by way of opposition to the former, are called *little states*.

SECT. 2.

Of Royal States.

AMONG the sovereign states of Europe there are fifteen monarchies, and some republics, which are incontestably entitled to royal honours: to wit:

Monarchies.

1. Britain (Great) and Ireland,*
2. Denmark and Norway,
3. France,
4. Germanic Empire,
5. Hungary and Bohemia,
6. Pope's Territories,
7. Poland,
8. Portugal,
9. Prussia,
10. Russia,
11. Sardinia,
12. Sicily.

vary and vague. If we would divide them according to their power, we must make more than two classes; and then, the province of Holland, the republic of Berne, and the duchy of Silesia, could not be ranked in the lowest class.

* I have here placed the kingdoms in alphabetical order; and I beg the reader to observe, that if I have not every where observed the same order, it is not because I have deviated from the strict impartiality, which it has been my study to adhere to.

12. Sicilies (the Two),
13. Spain,
14. Sweden and Gothland,
15. Turkish Empire.

Republics.

1. Venice,
2. The Seven United Provinces,
3. The Helvetic Union.*

Besides these, the Republic of Genoa and the Order of Malta have pretensions to royal honours, but as they have both had disputes on this head, we must be permitted to doubt whether they ought to be ranked among the *great states* or not.

SECT. 3.

Sovereign States which are not royal.

THE other sovereign states, which are called *little states*, are monarchical, as the Dutchy of Silesia, and the Comté of Glatz, the Principalities of Monaco, of Bouillon, and of Henrichemont; or republican, as the Republic of Lucca, of San Marino, of Ragusa, the Seven United Provinces, considered separately, the country of Drentha, the members, separately considered, of the Helvetic Union, the greatest part of as-

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* J. J. MOSER, *gerettete völlige Souverainität der Schweizerischen Eidgenossenschaft*, Tubing. 1781. 4to.

sociated * or allied † states, and the town of Gerisau,

SECT. 4.

Demi-sovereign States.

AMONG the demi-sovereign princes, there are only the Electors of the Germanic Empire who are entitled to royal honours. The demi-sovereign states are :

1. The States of the Empire.
2. * The body of immediate Nobility in Germany, and some other immediate Lords.
3. The immediate Princes of Italy, who yet acknowledge their submission to the Empire. ‡
4. The Duke of Courland and Semigal.
5. The Princes of Wallachia and Moldavia. §
6. The towns of Dantzic, || of Thorn, and of Bien.

SECT.

* Such as the Abbey and the Town of St. Cal.

† That is to say, the Grisons, the Valais, the city of Mulhausen, the principality of Neuchâtel, the city of Geneva, and the Bishopric of Basle.

‡ Such as the Milanese, Mantua, Piedmont, Montferrat, Modena, Mirandola, Novellara, Masserano, &c. See MOSER, *Versuch*, vol. 1. book 1. c. 1. § 12. book 2. c. 1. § 20.

§ See LE BRET, *Magazin*. vol. 1. n. 24 p. 149, and the following.

|| MOSER, *von d. Reichstünden*. p. 1110.

SECT. 5.

States of disputable Sovereignty.

I HAVE already remarked that there are some states, the sovereignty of which is yet a matter of dispute. To the *little* sovereign states, Silesia, the Republic of Lucca, and the associated states of the Helvetic Union, we might add many other states of Italy,* and the Abbey of Engelberg† in Switzerland; but they are omitted, because their sovereignty is a point of contestation.

SECT. 6.

Of the Maritime Powers.

THE division of the great states, according to their local situation, into Northern, Southern, Eastern, and Western, powers of Europe, has less to do with law than with politics, and with the particular interests that sometimes actuate neighbouring states. But there is another division, which, though it depends, in some measure, on the local situation of states, ought not to be neglected in treating of the law of nations; I mean the division into maritime powers, and powers
not

* Such as the Grand Duchy of Florence, the Dutchies of Parma, Placentia, and Guastalla; the principalities of Bossolo, Sabionetta, Masserano, Castigliona, Solferino. See GUNTHER, *Europ. Völkerrecht*, vol. 1. p. 120.

† BUSCHING, *Auszug aus seiner Erdbeschreibung*, p. 344.

not maritime. It is common enough to call every state maritime, that is situated on the borders of the sea, and is capable of carrying on commerce on that element; but a maritime power, properly speaking, is a power that keeps up a fleet of ships of war*; and, in this acceptation of the term, there are only Great-Britain, the Seven United Provinces, Spain, Portugal, the Sicilies, Denmark, Sweden, Turkey, the Republic of Venice, latterly France, and, since the beginning of the eighteenth century, Russia, which can be called maritime powers: the other powers have either never been maritime, or have ceased to be so.† But this term, in a more restrictive sense, is applied to those powers only whose principal strength consists in ships of war, or whose power by sea has a preponderance over that of the other powers, on the same element. In this double sense, England and the United Provinces have since the end of the seventeenth century‡, been exclusively distinguished by the appellation of the maritime powers.

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CHAP.

* Neither fleets of merchantmen, nor a few ships of war, for convoys or guard-ships, nor even a fleet of galleys, can ever be looked upon as constituting a maritime power.

† For many reasons, the Empire (See H. Count de BUNAU, *de jure Temporalis atque Imperii circa maria*, Lips. 1774. 4to. particularly § 81.), Poland, Switzerland, Hungary, and Prussia, have never been maritime powers; and the maritime power of Genoa and the Hans Towns has dwindled into nothing.

‡ See the Count HARTZBERG's dissertation *sur la véritable richesse des Etats*, &c. 1786.

CHAP. III.

OF FORMS OF GOVERNMENT.

SECT. 1.

Of the Division of States into Monarchies and Republics.

WHEN the rights of sovereignty, and consequently the majesty, of a state, are lodged in the hands of one person, the government is monarchical; when they are lodged in the hands of several persons, it is republican. A republic may be democratical or aristocratical, according as the supreme power remains in the hands of all the people, or those who represent them, or as it is given up to an assembly composed of members of the state.

When we say that the rights of sovereignty are intrusted to some one, we do not always mean, that he possesses them all, without exception; it is understood that he possesses the greatest part, or the most essential of them: but, detached rights of sovereignty, intrusted to an individual, though that individual be invested, besides, with a charge of dignity and eminence in the state, do not render the government of such state less republican, provided that the rest of the rights of sovereignty be placed in the hands of an assembly, to whose authority

authority every individual, as member of the state, is subject.

The rights of sovereignty may all be intrusted to an individual, or to an assembly, in such manner, that those who possess them, may exercise them without the consent or advice of any other; or the exercise of these rights, or, at least of some of them, may require the advice or consent of the people, or their representatives; instances of the first are seen in *unlimited* monarchies and republics, and of the latter, in those which are *limited*.

SECT. 2.

Of the Monarchies and Republics in Europe.

In applying these principles to the states of Europe, it is easy to perceive, that every state in it which has a king for its chief, including the Empire and Poland, is monarchical; whatever may be the degree of power committed to such chief. It is evident also, that we must reckon as republics; 1st, Venice and Genoa, although they are both governed by a Doge *; because the Doge, with all his dignity and his rights, is no more than a member of the sovereignty. 2ndly, Each of the Seven United Provinces †, notwithstanding

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* See LE BREY on the republic of Venice; *Vorlesungen uber die Statistik*. vol. 1. p. 230 and the following; And for the republic of Genoa, see *Les loisirs du chevalier d'Eon*. vol. 6. p. 80.

† PISTEL, *commentarii de republica Batava*. Lugd. Bat. 1782. 8vo.

the dignity and rights of their hereditary Stadtholder ; because though he is a member of the government in every one of the provinces ; and though he exercises regal authority in the name of some of them, yet he does not possess the whole of the rights of sovereignty, nor the personal majesty which depends on them. 3dly, Each of the cantons that compose the Helvetic Union.

But it may be observed, that neither the Seven United Provinces, having a general and hereditary Stadtholder at their head, nor the Helvetic Union, can be considered as a *state*. A state, strictly speaking, supposes one common sovereign ; but, in neither of these two associations of states, are the whole of the rights of sovereignty intrusted to one assembly or to a single person : the members of each union are states, sovereign of themselves, voluntarily united for their mutual benefit. They enjoy certain rights in common, but no one of them acknowledges another, or even all the others collectively, as possessing a right of sovereignty over it : so that, it is only in a very indefinite sense that these associations of states can be considered as *republics*.

It would take up a great deal of our time, to very little profit, to examine particularly the constitutions of all the little sovereign and demi-sovereign states of Europe ; I therefore pass them over in silence.

SECT.

SECT. 3.

Of Monarchies, as hereditary or elective, &c.

MONARCHICAL states are either hereditary or elective, or they are partly one and partly the other. In hereditary monarchies the right as well as the order* of succession are fixed, either by custom, by fundamental laws, or by family compact; or sometimes (as we have seen it happen in Europe more than once) they are fixed, or confirmed, by treaties with foreign powers†. In elective states, the right of election belongs either to the people, or their representatives, as in Poland, or to the chiefs of the state, as in Germany. In the ecclesiastical state of Rome, the right of election belongs to the Cardinals.

There are some states which are elective and hereditary at the same time, as Russia since Peter I. ‡ and
D 3 Turkey,

* In all the great hereditary states, the male descendants take the lead of the females, in the right and order of succession. In France, and now in Sweden and Sardinia, women are entirely excluded; in Denmark, Spain, Sicily and Prussia, they cannot succeed 'till after the extinction of all the males of every branch; in England and Portugal, the princes of the same branch take the lead of the princesses.

† The succession to the kingdom of Spain, after the death of Charles II. and that to the states of Austria, after the death of Charles VI. will serve as examples.

‡ See BUSCHING, *Magazin für die neue Historie und Geographie*, vol. 10.—SCHLOZERS, *historische Untersuchungen üb. Russlands Reichsgrundgesetze*, Gotha. 1777. 8vo.—CURTIUS, *über das Russische Successions-Gesetz*. See DOBMS, *Materialien* III. te Lieferung.

Turkey. On this account some authors denominate these states *mixed**, and others *patrimonial*†.

SECT. 4.

Of Monarchies, considered as despotic, absolute, or limited.

THE monarchies of Europe differ extremely, with respect to the power that the sovereign possesses of exercising the rights of sovereignty. If the exercise of these rights is subject to no restriction but that which the public universal law prescribes to every sovereign, the state is *despotic*; such is Turkey‡, and such is a great part of the Empire of Russia. If this exercise belongs solely to the sovereign, but is restrained by fundamental laws (as in Denmark, in great part of Spain, in Prussia, and in the two Sicilies§), the state is an *absolute monarchy*. If, to exercise many of the rights of sovereignty, the prince is obliged to ask the advice or consent of the nation, the state becomes a *limited monarchy*. Of *limited* monarchies some are much less

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* Sometimes however, we mean by *mixed state*, one in which the successor must have his right confirmed by the nation, before he can mount the throne. See ACHENWALL, *de regnis mixta successionis*, Gotttingen, 1762. 4to.

† NEYRON, *principes du droit des gens*, p. 37.

‡ See STOEYER, *historisch-statistische Beschreibung des Osmanischen Reichs*, Hamburg, 1784.—LE BRET, *Magazin der Staaten-und Kirchen-historie*, p. 1. n. 2. p. 2. n. 2.

§ JOS. BASTA, *institutiones juris publici Neapolitani*, vol. 1. 2. Naples, 1783.

so than others. In some, the sovereign has to obtain the concurrence of the nation in the exercise of certain rights only, as in France *, Portugal, Hungary, Bohemia †, and Sweden ‡; in others, certain rights are divided between the sovereign and the nation, as in England §. In both these cases, all the other rights are left in the hands of the sovereign; but there is another, in which the sovereign can exercise particular rights only, without the advice or consent of the nation, as in Germany and Poland.

SECT. 5.

Of Republics, considered as Aristocracies, Democracies, &c.

AMONG the republics of Europe some are aristocratic. A state is aristocratic, when the sovereign power over the people is lodged in the hands of an assembly consisting of members of the state. It matters not whether the right of participating in the government be hereditary or not, or whether the members of the assembly be in for life, or only for a certain number of years. Aristocracies are *absolute* when the assembly alone can exercise all the rights of sovereignty,

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* *Maximes du droit public*, tome 1. 2. 4to.—BOULAINVILLIERS, *histoire des anciens parlemens, avec 14 lettres sur les assemblées des états-généraux*.

† PUTTER, *Handbuch der teutschen Staaten*, tome 1. p. 157.

‡ *Versuch über Schwedens Geschichte und dormalige Staatsverwaltung*, Stralsund, 1780, p. 204.

§ DE LOLME, *Constitution of England*, second edition, chap. 5.

as at Venice and Genoa, and in some of the Swiss Cantons*. They are *limited*, when the exercise of certain rights requires the consent of the people, or those who represent them, as at Zurich; or when the exercise of certain rights is divided between the senate and the people, as at Hamburg.

Some republican states are democratic, that is to say, all the rights of sovereignty are retained in the hands of the people; and the assemblies are mere agents, employed to exercise those rights which it would be impossible for the people to exercise themselves. We have examples of this sort of government in several of the Swiss Cantons.

Sometimes the rights of sovereignty are all divided between the *citizens* of different orders in the state, such as the nobility, the clergy and the corporations of cities; this makes a *mixed* republic. Such is each of the Seven United Provinces; though some of them come nearer to an aristocracy than others†. This sort of government approaches nearest to a limited aristocracy; but there is, however, a considerable difference between them.

Again, a province may be subject to one or more republics; as are the countries subject to the Seven United Provinces, or those bailiwicks in the Swiss Cantons which belong to several cantons; but this circumstance

* See, on this subject, LEONH. MEISTER, *Eydgenössisches Staatsrecht*, 8vo. *Etat et délites de la Suisse*, Neuchâtel, 1778. tome 1—2. 4to.

† PESTEL, *commentarii de republ. Batava*, vol. 2. § 184.

cumstance alone cannot entitle such dependent province to the name of republic ; because the members of the supreme power are not members and subjects of the state.

CHAP. IV.

OF THE RELIGIONS OF THE EUROPEAN NATIONS.

SECT. 1.

History of Religion.

A GREAT part of Europe, and even of Asia and Africa, had embraced the Christian Religion * at the beginning of the seventh century ; when the doctrine of Mahomet put a stop to its progress in the two latter, and retarded it in the former. His successors, not content with having introduced their religion, sword in hand, into a great number of conquered provinces out of Europe, invaded Spain, and took possession of it, in the eighth century. They were, however, opposed, reduced, and finally, in the beginning of the seventeenth century, driven entirely out of that part of the world. By the zeal of the Western Church, the Christian Religion was introduced into Germany in the seventh

* SPITTLER, *Grundriss der Geschichte der Christlichen Kirche*, second edition, Gottingen, 1785.

venth century, into Britain in the eighth, into Sweden, Denmark, and Bohemia in the tenth, and into Prussia in the thirteenth. At near about this last epoch, it was introduced into Hungary, Poland, and Russia, by the missionaries of the Eastern Church. So that, at the latter end of the thirteenth century, all Europe was christian ; and it might have continued so to this day ; but the Turks, profiting by the weakness of the Emperors of the East, gained a complete footing in Europe, in the fourteenth century, and seized on Constantinople in 1453, where they laid the foundations of the only anti-christian monarchy that now remains in Europe.

SECT. 2.

The bosom of the Christian Church was, for a long time, rent with disputes, which caused at last, in the middle of the eleventh century, a total schism between the Greek and Roman Churches. The first prevails yet in Russia, and is tolerated in Hungary, Poland, and Turkey, and in certain towns of many other christian states. This church acknowledges no common chief in ecclesiastical matters, though it must be observed, that a part of its disciples are subject to the Pope, under the name of *United Greeks*. On the contrary, the Romish Church, comprehending the rest of Europe, acknowledged the Pope for its spiritual chief till the sixteenth century. This was the epoch of what is usually called the *reformation*. It was begun by Luther in Germany, and by Zwinglis and Calvin in Switzerland.

Switzerland. The sad effects, that flowed from the disputes between the disciples of the first reformers, did not hinder their doctrine from spreading itself into other countries. The doctrine of Luther was received in Prussia, Denmark, Sweden, and England; that of Calvin, in Holland, in part of France, and in Scotland. In short, after much trouble, persecution, and bloodshed, the Roman Catholic religion was, in some of the states of Europe, entirely proscribed, and the reformed established in its stead; in other states the reformed religion was tolerated, without abolishing the catholic; in others, the reformation has never penetrated, or has failed, after some useless efforts.

SECT. 3.

Of the Connexion between States of the same Religion.

NOTWITHSTANDING these revolutions, the greatest and most powerful part of Europe remains yet in the bosom of the Romish church. This church still forms but one state, as far as relates to spiritual matters, the members of which acknowledge the Pope as their common chief, endowed with rights more or less extensive according to their several internal systems, and to the concordates * existing between them and the Pope. The protestant states, on the contrary, whether

* See the catalogue of Concordates by Mr. LE BRET, *Verhandlungen über die Statistik*, vol. 2. p. 352, and the following.

whether Lutheran or Calvinist, having adopted no system of unity, have no connexion with each other in spiritual matters*; consequently, the church in each state considers itself as a separate society. Each of these societies intrusts its spiritual rights to the same person, or persons, to whom are intrusted its civil rights; or else to bishops, nominated either by the church or the prince; or, which is more common in reformed states, the rights of the church are exercised by its elders, or in the synods which are held for that purpose.

SECT. 4.

Of the different Christian Sects in Europe.

IN the foregoing sections I have considered Christendom as divided into Roman Catholics and Protestants; but the reformation did not stop here. Out of the Lutherans and Calvinists sprang divers other religious societies, and these are usually termed *sects*: such are the Socinians, Anabaptists, Moravians, &c. each of which has its ramifications almost without number.

* There subsists a *particular* connexion between the churches of the Seven United Provinces, though, latterly, it has not had much effect. The connexion subsisting between the protestant states of Germany, is not, any more than that subsisting between the catholic ones, of an ecclesiastical nature. The object of these connexions is the maintenance of the religious rights, as settled at the peace of Westphalia, and by the laws of the Empire. Their effect is no where so observable as in the diet.

number. None of these sects are considered as the predominant church of any state in Europe. In some states they are all tolerated to a very high degree, and are even permitted to form a separate body; while in others they are not tolerated at all, or, at most, only individual members of them are tolerated.

SECT. 5.

Of the Jews.

THE Jews, so often persecuted, oppressed, and almost every where debased, are, however, in some respects, very useful in a commercial state. Their religion is not, generally speaking, tolerated at all in some countries, as in Spain, France*, Russia, Denmark†, and in some of the states of the Empire; in others it is tolerated, and even exercised openly, as in Sweden‡, England§, several states of Germany, Hungary, some parts of Italy, Poland, Prussia, Turkey, at Venice, and in the Seven United Provinces; but in all these countries, the civil rights of the Jews differ very widely from those of persons who are of the predominant church.

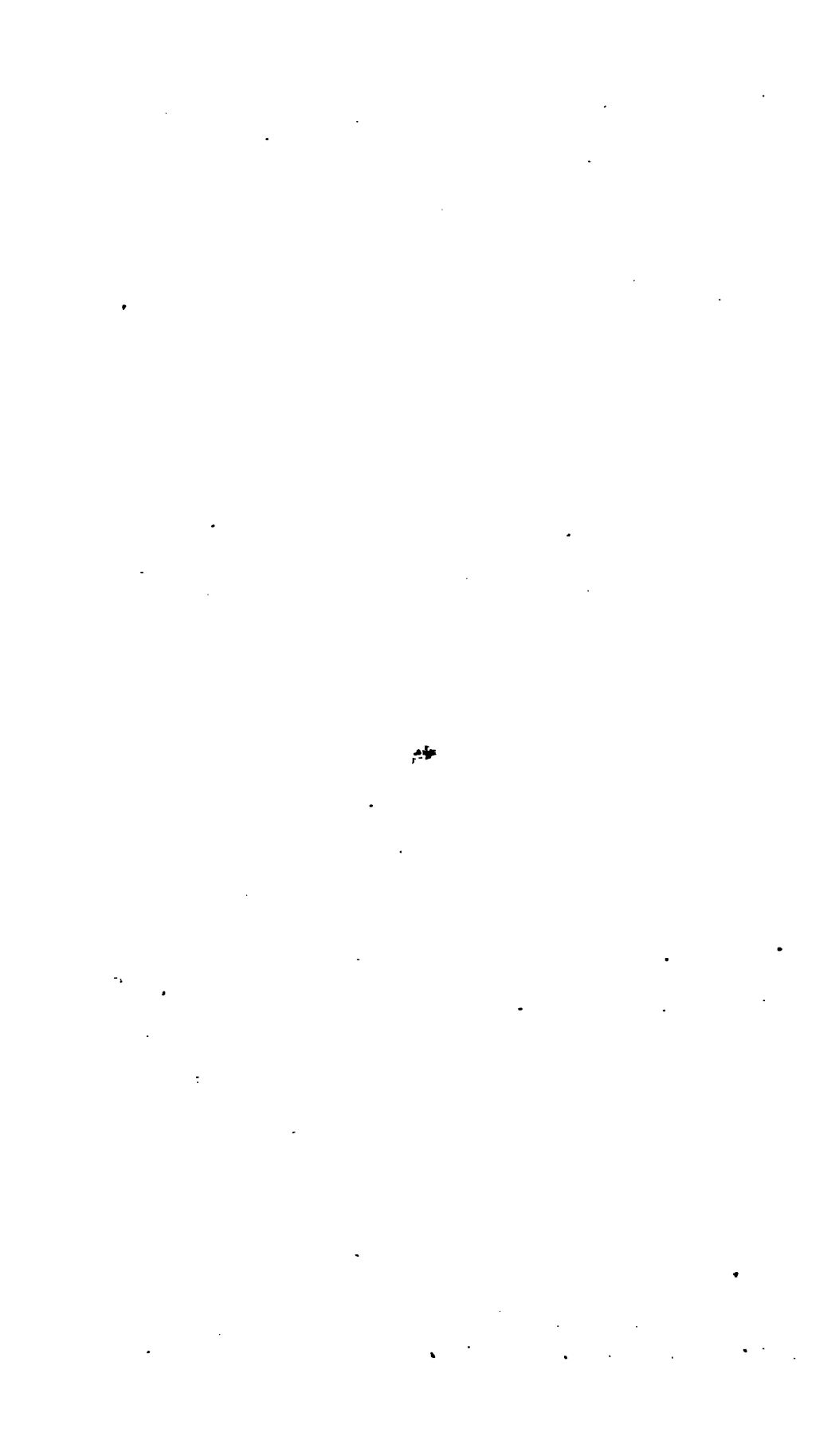
BOOK

* It is, however tolerated in some parts of the kingdom, as at Nancy, Bourdeaux, Bayonne, and in some of the countries of Alsace. See LE BRET, *Magazin*, &c. vol 7, p. 62.

† By a law of Christian V. it is tolerated at Copenhagen.

‡ Since 1776. See ACHENWALL, *Statistik*, vol. 2. p. 652. 1785.

§ See *Mercure historique et politique*, 1753, p. 603. ADLUNG *Staatsgeschichte*, vol. 8. p. 343.



B O O K II.

OF THE BASIS OF THE POSITIVE LAW OF NATIONS.

C H A P I.

OF TREATIES.

SECT. 1.

Of positive Obligations in general.

As sovereign powers acknowledge over them no legislator but God, they can have no rights and obligations between them but such as the divine laws impose. But they may add to these primitive obligations, by renouncing voluntarily a part of their rights, or taking on themselves new obligations: after which they stand engaged to do, not to do, or to suffer, what they were not absolutely obliged to do, not to do, or to suffer. The basis of these new rights and obligations, which form the positive law of nations, is, then, the mutual *will* of the nations concerned. This will may be *declared* by words, gestures, or other marks received

as the signs of thought, or by actions from which consent may be deduced : or else it may be *presumed* ; for instance, what a nation has always done hitherto, we may presume it will do for the future. Hence the different foundations of the positive law of nations ; to wit, express covenant, tacit covenant, and custom.

SECT. 2.

Of Treaties in general.

EXPRESS covenants made between nation and nation, are called public covenants, or *treaties*. The covenants which the sovereign makes as a private person, or those which he makes as sovereign, but with private persons (as private persons), do not take the name of *treaties* * ; nor do they belong to our subject.

SECT. 3.

Of the Validity of Treaties.

FOR a covenant to be obligatory, five things are necessarily supposed : 1. that the parties have power to consent ; 2. that they have consented ; 3. that they have consented freely ; 4. that the consent is mutual ; and, 5. that the execution is possible.

1. *The parties must have power to consent.* The treaty must have been contracted in the name and by the

* GROTIUS, book 1. chap. 15. § 1, and the following.

the authority of the sovereign power. Any thing that has been promised by the chief, or his agent, beyond the limits of the authority with which the state has intrusted him*, is, at most, no more than a simple promise (*sponsio*)†, which only obliges the person who promises to use his endeavours to procure its ratification, without binding the state, which, of course, may refuse such ratification. On the contrary, every thing that has been stipulated by an agent in conformity to his *full powers*, ought to become obligatory for the state, from the moment of signing, without even waiting for the ratification. However, not to expose a state to the errors of a single person, it is now become a general maxim, that public conventions (but not simple military arrangements in time of war) do not become obligatory, till ratified.‡ The motive of this custom clearly proves that the ratification can never be refused with justice, except when he who is charged with the negotiation, keeping within compass with respect to his public full powers, has gone beyond his secret instructions, and, consequently has rendered

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himself

* Thus the stipulations of a monarch, though he should be absolute, cannot be valid, if it militates against the fundamental laws of the state; at least, unless it be ratified by the nation. See, on this subject, the example given in the renunciation of Philip V. to the succession of the crown of France, in 1711. *Mémoire de Torcy*, tome 3, p. 130. *Monteon*, tome 2, p. 252. 401.—Tome 3. p. 70.—SCHMAUSS, *Einkit. in Staatswissenschaft*, tome 1. p. 389.

† See the remarkable instance in TITUS LIVIUS, b. 9. ch. 1.

‡ DE REAL, vol. 5. p. 649.—HERALD, *de ratificatione*. DE MEEREN, *de jure ratificationis*.

himself liable to punishment ; or when the other party refuses to ratify.

2. *That they have consented.* The consent must have been fully and clearly declared, either by words, or by signs to which custom has attributed the same value. It is totally indifferent, as to the obligation, whether these words have been actually articulated, or whether they have been committed to writing *: now-a-days, however, in order to facilitate the proof, they are always committed to writing. The form of the treaty is of no consequence ; a simple promise, declared and accepted, has the force of a treaty between nations as between individuals †.

3. *That they have consented freely.* The consent must have been a voluntary act of each contracting party. What has been extorted by physical necessity, is not obligatory, because the party has not consented. What has been extorted by moral necessity, that is to say, by the fear of a greater evil, is obligatory, if the violence employed by the other party was just ; but if it was unjust, the obligation ceases through default of title

* Mr. NAYTON supposes, I know not for what reason, that covenants made by word of mouth are not now obligatory among nations. See his treatise *de vi fœderum spæciatim de oblig. success. exfœd. antecess.* sect. 23. This is confounding law with fact.

† We deceive ourselves, if we confine the positive law of nations to what has been settled by formal treaties. The more we examine the relations established between states, the more we shall be convinced, that a very considerable portion of their rights rest upon covenants destitute of form and solemnity. It appears to me, that those who have hitherto treated of this subject, have not given this observation all the attention it merits.

title in him who is to acquire a right*. However, the security, liberty, and independence of nations, could not subsist, if, in default of a superior judge, and in default of a right to judge in their own cause, they did not acknowledge as just (with respect to *external effects*) all violence employed by each other. Therefore, the plea of *fear* cannot be opposed to the validity of treaties between nation and nation, except, at most, in cases where the injustice of the violence employed is so manifest as not to leave the least doubt.

4. *That the consent is mutual.* The consent must be mutual, and must be given for the same object. When an error takes place with respect to the object of the covenant, it excludes the consent. It is of no consequence whether the error be involuntary, or whether it be owing to the insincerity of the contracting parties, or one of them, or to a third person †.

The injury, on the contrary, that a nation may sustain from a treaty, is not a justifiable reason for such nation to refuse complying with its conditions. It is the business of every nation to weigh and consult its own interests; and, as nothing hinders a nation from acquiring a right in its favour by a covenant with another, and it being impossible for any one to determine the degree of injury requisite to set a treaty aside,

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or

* See PUFFENDORFF, *droit de la nature et des gens*, liv. 3. chap. 6.

† Ibid. liv. 3. chap. 6. § 6. — GROTIUS, lib. 2. chap. 9. n. 6, chap. 12. n. 12.

or to judge, in an obligatory manner, of the injury sustained, the security and welfare of all nations require, that an exception should be admitted which would sap the foundations of all treaties whatever.

5. *That the execution is possible.* The execution of the treaty must be physically and morally possible. So that, if the accomplishment be physically impossible, either from the nature of the promise, or from circumstances; or if the accomplishment interferes with the interests of a third, or tends to ruin the nation which has promised *, the covenant becomes void, or, at least, ceases to be obligatory.

SECT. 3.

Of the different Sorts of Treaties.

TREATIES serve either to confirm to a nation the rights which belong to it by the law of nature, or to change into a positive right what was before a natural one†. There are some treaties that are fulfilled at once,

* Provided that this pretext is not made use of every time a nation finds some disadvantage attending the fulfilment of a treaty. See how the late King of Prussia explained himself on this subject, 1746 and 1775. See Mr. le Comte de HERTZBERG, *mémoire historique sur la dernière année de la vie de Frédéric II. Roi de Prusse*, 1787. 8vo. p. 33. et suiv. en comparant p. 41. et suiv.

† Mr. MENDELSON, in his treatise, under the title of *Phædon*, p. 219, and *Jerusalem*, p. 53, and the following, maintains, that treaties serve only to render imperfect obligations perfect ones.

once, as for instance, treaties of boundary, of exchange, &c. and others which can be fulfilled successively only, as the occasion presents itself, such as treaties of commerce, alliances, &c. These latter are called *treaties* in a more particular sense (*fœdera*), in opposition to transitory covenants (*pacta transitoria*). To this may be added, that treaties are sometimes *mixed*, including articles of both sorts.

SECT. 4.

Of Equality in Treaties and Alliances.

WE must not confound the equality of a treaty with that of an alliance. The equality of a treaty depends on the equality of the stipulated succours, in proportion to the strength and interest of the contracting parties *. The equality of an alliance depends upon the honours and services yielded by powers to each other in virtue of treaty. It is unequal when a power engages to render greater honours and services to another than it receives in return. Treaties of protection, of tribute, and of vassalage, are of this sort. It

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may

* A treaty may be equal, although the stipulated succours are unequal, when one power has more interest in concluding it, or more forces than the other. The alliance of 1731 with the Dutch, the family compact of 1761, are equal treaties, though, in appearance they are unequal. It is the business of the politician to determine whether a treaty be equal or unequal.

may so happen, that the treaty is equal and the alliance unequal, and *vice versa* ; or both may be equal, or unequal.

SECT. 5.

Of Treaties, as divided into personal and real.

TREATIES, properly so called, are either personal or real. They are personal, when their continuation in force depends on the person of the sovereign (or his family) with whom they have been contracted. They are real, when their duration depends on the state, independently of the person who contracts. Consequently, all treaties between republics must be real. All treaties made for a time specified, or for ever, are also real. With respect to those which are made for an indefinite time, attention must be paid to the terms of the treaties themselves, to circumstances, and to the constitutions of the contracting states, in order to decide to which class they belong *. Latterly, sufficient care has been taken to express this matter so fully as to leave no room for dispute.

* GROTIUS, book 2. chap. 16. sect. 16. VATTALL, book 2. chap. 12. sect. 190.

SECT. 6.

Of the Importance of this Division.

THIS division is of the greatest importance; because real treaties never cease to be obligatory, except in cases where all treaties become invalid. Every successor to the sovereignty, in virtue of whatever title he may succeed *, is obliged to observe them, without their being renewed at his accession. But personal treaties expire when the person who has contracted them dies, or ceases to reign, whether by abdication or dismission; except, however, when the object of such treaties is to maintain a certain family on the throne, and that that family has yet some hopes of re-establishment.

SECT. 7.

Of the Duration of transitory Covenants.

THERE is a very important difference between *transitory covenants* and *treaties*, with respect to their duration. When once a transitory covenant has been fulfilled, and has been continued on afterwards without being renewed, or its future duration has been defined by the contracting parties, it still continues in

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force.

* GROTIIUS, book 2. chap. 14. sect. 10. chap. 16. sect. 14.
 NAYTON, *de vi fœderum inter gentes*, &c. Gottingen, 1778. 4to.

force. No changes that may take place afterwards as to the person of the sovereign, the form of government, or the sovereignty of the state, can in the least impair the validity of the covenant, while it is observed on the other side. If a war * even should break out between the contracting parties, the covenant does not, on that account merely, become entirely null, although the effects of it may be suspended during the war. But it must be admitted, that one party, in order to obtain due satisfaction, has a right to declare, that his adversary has forfeited all the rights he enjoyed in virtue of the treaties existing between them,

SECT. 8.

Of the Duration of Treaties.

TREATIES, properly so called, cease to be obligatory when the sovereign power with whom they were concluded ceases to exist, and when the state passes under the dominion of another power. Sometimes they cease when a state changes its constitution; and always, when a war, on whatever account, breaks out between the contracting parties; except it may be such provisions contained in them, as have been made

* MOSER, *Von der Verbindlichkeit der Friedsschlüsse bey entstehendem neuen Kriege*. See his *vermischte Abhandlungen aus dem Europ. Völkerrecht*, 1. Stuck, p. 33.

made in case of war *. All treaties, then, existing between belligerent powers, previous to the war, must be renewed at the peace, if the parties wish to continue them. It must be allowed, however, that, touching this point, sovereigns have not always acted upon the same principles †.

SECT 9.

Of renewing Treaties.

To preclude, as much as possible, the disputes that might arise on the validity of treaties made by predecessors, or by powers before the breaking out of a war between them, it is customary, 1. When sovereigns come to the throne, whether in virtue of succession or election, for them to make declarations to the powers in alliance with the state, confirming the treaties made by their predecessors. But, it must be owned, that such declarations, which are often made verbally, are seldom sufficient to prevent all the disputes that may arise on this head. 2. It is customary, when a treaty of peace is made, to take care to renew, either mediately or immediately, all the treaties that may be even suspected of having been violated during the war; that is, if the parties mean they should be observed

* Such provisions, for instance, as relate to the treatment of each others subjects, their vessels, merchandise, &c. in the case of a rupture,

† MOSER, in the dissertation just mentioned, p. 251.

observed for the future. But this custom cannot be extended so far as to invalidate every treaty that the contracting parties have not renewed at the peace.

SECT. 10.

Of the Means of strengthening Treaties.

IN order to secure the observation of treaties, the contracting parties had recourse, formerly, to a great number of accessory covenants, some of which were ridiculous enough. They almost always made use either of oaths *, hostages, pledges, or guarantees †, for which the subjects or vassals of the contracting states were often chosen. But, now-a-days, oaths are laid aside in treaties between sovereigns ‡. Hostages are yet made use of, but this is generally in military arrangements, or for the fulfilment of some particular

* GROTIUS, book 2. chap. 18. This security and some others, where religion had some weight (for instance, the submission to the ecclesiastical ban, in case of infraction. See D. REAL, vol. 5. 660.), contributed much to the authority which the Popes arrogated to themselves with respect to the treaties between catholic sovereigns. Having the power to dispense with the observance of oaths, they thought they had a right to dispense with that of treaties also ; but this right exists no longer.

† See STECK, *von den Geiseln und conservatoren und dem Ursprung der Garantien*. See his *Versuch über verschiedene Gegenstände*, 1772. n. 5. p. 48.

‡ We find an instance of oaths being made use of at the peace of the Pyrenees, and again at that of Ryswick, art. 38. And still later, the alliance concluded between France and the Swiss Cantons, was confirmed by a reciprocal oath. See Mr. MOSER, *Versuch*, vol. 8. p. 267.

cular article of a treaty of peace*. The custom of choosing subjects and vassals for guarantees has changed by little and little since the sixteenth century, till it is now become an established rule to solicit foreign powers to take on them that office †: hence our modern guarantees, which, after all, are, perhaps, more frequent than useful.

CHAP. II.

OF TACIT-COVENANTS, CUSTOM, AND ANALOGY.

SECT 1.

Of tacit Covenants.

As express consent supposes words, or signs which have the same value as words, so tacit consent supposes actions, which, though not the signs substituted for words, prove the will of the party that makes use of them: by these are formed what we call tacit covenants.

* Thus, for instance, at the peace of Aix-la-Chapelle, England sent hostages to remain at Paris, till Cape Breton was restored to the French.

† See STRECK, in the dissertation mentioned in the second note of this section; and also NEYRON, *essai sur les garanties*, Gottingen, 1777. 8vo.

nants. They have the same force as express covenants, with regard not only to the nature of the obligation they produce, but to their irrevocability also. There are an infinity of actions from which we may deduce consent to what is of a transitory nature ; and there are also actions by which a power engages itself tacitly for the future. But, for an action to produce this effect, it must, 1. have been undertaken or omitted freely and knowingly ; 2. the party must have believed himself in duty bound to act thus ; or, at least, 3. the action must be of such a nature as that it cannot be omitted, or committed, once, without giving the other party a right to require its continuation for ever after.

When these three circumstances, or at least the two first, concur, one single action is enough to prove a tacit consent ; a repetition of it serves only to facilitate and strengthen the proof.

SECT. 2.

Of Custom.

A SINGLE action, absolutely arbitrary, or dictated merely by the common principles of humanity, decency, or politeness, is by no means sufficient to prove, that the party making use of it, engages to do the same for ever after, when a like occasion presents itself ; nor even if, during whole ages, a nation has continued to repeat such an action, that repetition can never amount to an engagement for the future : nor can it

ever take from one nation the right of changing its conduct in that respect, as often as it thinks proper, without consulting any other. All that can be built on such actions, is, a *presumption* that the nation will continue to act as it hitherto has done, as long as it does not declare its intention to the contrary, and as long as circumstances do not change. This presumption may be founded on a single action, if the action be of a presumptive nature. It is naturally strengthened by time; and a frequent repetition of actions uniformly undertaken, grows, at last, into an established custom. A custom does not, consequently, rest on tacit consent, but on the presumed will of the party that observes it.

One nation having a right to presume on the will of another, implies an obligation on the other side to give timely notice, before it abolishes, or deviates from, a custom; so that no other nation may be induced, by such custom, to take a step that might be contrary to its interests. This obligation, although imperfect in itself, has much weight with nations united by treaties of friendship, and is, generally, acknowledged and observed by all the powers of Europe*.

SECT.

* Observe, among an infinity of instances, the extreme circumspection made use of by Pope Julius II. before he abolished the privilege of asylum and exemption enjoyed by foreign ministers at Rome: 1686, and the following. See *Legatio Lavardini Romani missi*, 1688. 12mo.—And yet this was but a tolerated abuse.

SECT. 3.

Of the Force of Custom.

As customs have not the weight of express or tacit covenants; as they do never imply a perfect obligation; and, as they may be abolished or changed at pleasure, provided the time for so doing be notified before hand; that part of the positive law of nations which rests on simple custom would have but a very unstable foundation, if there were not exterior motives, which are, in some measure, a guarantee for their duration. These motives are; 1. the natural force of habit, which, in many cases, exercises its empire over nations as well as over individuals; 2. the interest that a nation has to keep up certain customs; 3. the fear that, in abolishing a custom, other nations might retaliate, by refusing to continue certain other customs; or, 4. that other nations might unite in withholding customary rights and immunities from a nation that has set the example; 5. decency, politeness, vanity, and ostentation, have often great weight, particularly when an adherence to points of ceremony is in question.

SECT. 4.

Of changing Customs.

HISTORY and experience prove, however, that simple customs change with times and circumstances.

It

It is not the same with those customs (if they may be so called) which serve to confirm the universal law of nations, and which, consequently, ought never to change.

It must be observed, besides, that, what was at first no more than a simple custom, may sometimes become a tacit or express covenant; and, on the other hand, express covenants are sometimes explained, abolished or changed, by customs which are afterwards introduced.

SECT. 5.

Of Analogy.

ANALOGY often forms the basis of decisions, in the affairs of nations. It is no more than the application of what has been determined by treaty or custom in certain cases, to other cases which resemble them, and which have not yet been decided. The weight and justice of an analogous decision depend, therefore, on the resemblance of the two cases.

CHAP. III.

OF PRESCRIPTION.

SECT. 1.

*Of Prescription, considered with respect to the universal
Law of Nations.*

ON this subject the following questions are often started: *viz.* Ought prescription to be considered as a particular source of right among nations, and as a mean of acquiring or losing a right? Does it make a part of the universal law of nations, and is it admitted as such by the powers of Europe?—A nation may certainly renounce the property or rights it possesses, in undertaking actions which prove such renunciation; and in losing its rights, it may authorize another to acquire them*. But, the main object is, to know, whether abstaining from the use of certain property or rights, or whether keeping silence voluntarily and know-

* GROTIUS, de J. B. and P. lib. 2. c. 4.—PUFFENDORF, D. de N. lib. 4. ch. 12. VATTTEL, *droit des gens*, liv. 2. chap. 2.—CUIJACI, ad I. I. D. de *usuacap.*—FEDER, *Recht der Natur*. vol. 1. chap. 2. sect. 1. and 22. vol. 2. sect. 79.

knowingly, while another makes use of them, can deprive a nation of such property and rights, and authorize another to seize on them irrevocably: this is what we have in view, when we examine whether *prescription* has any weight, or not, among independent nations.

Abstaining from the use of a right, or keeping silence while another makes use of it, can never have the force of consent, except we are obliged to speak of, or make use of, a right; and this obligation cannot exist among independent powers, according to the universal law of nations in its strict sense. As long as there is no engagement, simple presumption, founded on our silence or inaction, cannot deprive us, in spite of ourselves, of our rights for the time to come. Prescription * does not, then, constitute a natural right; and if the welfare, or convenience of nations, requires them to admit it; if it be presumed that they have consented to it; still we are as far from the object as ever, as long as the time required for losing or acquiring by prescription remains undetermined, and as long as the universal law of nations cannot determine it with precision.

* If possession be immemorial; if there exists no possession anterior to it, it is undoubtedly sufficient to set aside all the pretensions of others; but this is not the effect of prescription, founded on the duration of this possession; it is, the consequence of the natural impossibility for any other to prove a right better founded than that of the possessor.

SECT. 2.

Of Prescription, considered with respect to the positive Law of Nations.

IT is true, the powers of Europe often urge the right of prescription; they seem even to acknowledge the force of it, in having recourse to declarations, in order to preserve their rights. However, 1. these same powers often refuse to acknowledge it at other times; 2. sometimes they understand by prescription, *the extinction of a right which has been tacitly renounced by actions which prove the consent*; 3. declarations are often employed as an additional mean of securing a right, which the possessor would not, however, think of losing without this precaution; and, 4. declarations are sometimes essential to hinder certain actions, which a nation has been obliged to undertake, from being looked upon as amounting to a tacit consent.

As no covenant, whether general or particular; as no custom even, has determined the time necessary to establish a right by prescription, prescription, properly speaking, ought not to be considered as a source of the positive law of nations; at least, among the sovereign states of Europe. But, as to those states which are only demi-sovereign, there are some* whose
common

* Such are the states of Germany, which, being subject to the general laws of the Empire, are obliged to acknowledge the right of prescription

common legislator has provided laws to determine what is requisite to constitute a right of prescription among them; and, consequently, these states ought to acknowledge it, in the disputes that arise between themselves.

prescription in their transactions with each other, but not in those with foreign powers.—PUTTER, *Beiträge zu dem Teutschen Staatsrecht*, vol. 1. p. 297.



BOOK III.

OF THE INTERNAL CONSTITUTION OF A STATE,
AS FAR AS IT RELATES TO FOREIGN
POWERS AND THEIR SUBJECTS.

CHAP. I.

OF THE RIGHTS OF A NATION WITH RESPECT TO
ITS OWN TERRITORY.

SECT. 1.

The Territory the Property of the Nation.

FROM the moment a nation has taken possession of a territory in right of first occupier, and with the design to establish itself there for the future, it becomes the absolute and sole proprietor of it, and all that it contains; and has a right to exclude all other nations from it, to use it, and dispose of it as it thinks proper: provided, however, that it does not, in anywise, encroach on the rights of other nations.

It belongs to the possessors, of course, to make the distribution of their territory, and every thing attached to it. What is not, in this distribution, granted to individuals, or what afterwards ceases to belong to them, remains, or falls, to the whole society, or to the person amongst them on whom they have conferred the right of acquiring. The case is but little different, strictly speaking, when, in right of legitimate conquest, a nation seizes on a territory which is ceded to it at the peace.

SECT. 2.

Of the Empire of a Nation over its own Territory.

A NATION thus possessed of territory, has the sole right of determining whether, or not, it will sacrifice a part of its natural equality and liberty, and acknowledge over itself a sovereign power, invested with *empire* over the whole society. In case it wishes to enter into such a society, and to form a *state*, it belongs to the nation alone to form its constitution, and settle on a mode of conducting its public affairs.

CHAP. II.

OF THE RIGHTS AND OBLIGATIONS OF A NATION WITH RESPECT TO ITS INTERNAL GOVERNMENT AND CONSTITUTION.

SECT 1.

Of the Rights of each State relative to its own Constitution.

THE internal constitution of a state rests, in general, on these two points: *viz.* on the principles adopted with respect to him or them in whose hands the sovereign power is lodged, not only at present but for the future also; and on those adopted with respect to the manner in which this sovereign power is to be exercised. Both these depend on the will of the state, foreign nations having not the least right to interfere in arrangements which are purely domestic. However, there are some exceptions to this rule. In case a dispute should arise concerning either of the points above-mentioned, a foreign power may; 1. offer its good offices, and interpose ~~them~~, if accepted; 2. if called in to the aid of that of the two parties which has justice on its side, it may act coercively; 3. it may have a right, from positive title, to intermeddle; and 4. if its own preservation requires it to take a part in the quarrel, that consideration overbalances its obli-

tions to either of the parties. These exceptions, and particularly the two last, have been so extended by the practice of European nations, that no internal dispute, of importance, can now arise in any of them, but foreign powers find some pretext to take a part in it, if they find it convenient, without looking upon their interference as a violation of the law of nations.

SECT. 2.

Of the Choice of an hereditary Chief.

IN hereditary states, the nation has not only the right; 1. to confer the hereditary government on a family, by settling the right and order of succession; but also, 2. to elect a new chief when the first family is totally extinct; and 3. in case of a contestation for the sovereignty, it rests with the people, or their representatives*, while accident has thus put the right of election in their hands†, to choose which of the candidates they please, to reign over them. Nevertheless, if we consult history, particularly for some centuries past, we shall see, that disputes concerning succession,

* Thus, in Portugal, the states of the kingdom have expressly reserved to themselves the right of deciding this sort of differences. See the decree of the diet of *Lamego*, and the declaration of the three states of the kingdom, in the year 1641. Mr. DU MONT. vol. 4. p. 1. p. 302.

† See BOHMER, *principia juris publ. univers.* L. 3. c. 4. § 20. One of the pretenders to the throne having seized on it by force, does not oblige the people to obey him; but he may prevail on them to acknowledge his authority. See notes by Mr. BARBEYRAC on PUFFENDORF, l. 7. c. 17. § 15, and on GROTIUS, l. 2. c. 7. § 27. n. 4.

succession, in great states, are decided much oftener by the will of foreign powers, or by treaties*, than by the will of the people whose welfare is at stake. Odd as it may seem, we often see that the suffrage of a whole people has no weight at all in the settling of their own affairs. Pretended right, anxiety to maintain the general tranquillity, treaties, alliances with the people, or with one or other of the pretenders to the sovereignty, friendship, good neighbourhood, all furnish pretexts, well or ill founded, for the officious interposition of foreign powers. The authority, however, that the Pope formerly arrogated to himself, on different pretexts, of deciding disputes of this kind, and of disposing of crowns, is become less formidable now-a-days, even to those nations that remain in the bosom of the Romish Church.

SECT. 3.

Of Election of Sovereigns.

IN elective kingdoms, as often as the throne becomes vacant, it belongs to the people, or to those who represent them, to re-elect. Foreign princes may,

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* The Spanish succession was thus disposed of by treaties with foreign powers, first by the partition treaties, and definitively by the treaties of 1713, and 1714. The succession of the kingdom of Sicily and Sardinia by the treaties of 1713, and 1735. That of the States of Austria by the treaty of 1748; and that of Bavaria by the treaty of 1779.

in way of friendship, recommend to them some eligible candidate, or dissuade them from the election of some other; but they have no right to interfere authoritatively, much less to employ force in order to advance or exclude any person*; except, at least, they are authorised so to do by some express right, or except their own preservation obliges them to do it. But, besides that these exceptions are extended very far by modern practice†, there are certain regulations established by custom, in great elective monarchies, which it is necessary to give some account of here.

SECT. 4.

Of the Election of the Emperor.

THE first object of the Electors of the King or Emperor of the Romans has been to defend the freedom of their election against the encroachments of the Pope. We cannot look upon the right, that the
Kings

* Von JUSTI *ob die protestationes der auswärtigen Monarchen wider eine auf die Wahl gebrachte Person zu Beherrschung eines Walreichs in dem Natur-und Völkerrecht einigen Grund habe*. See his *hist. und juristische Schriften*. Vol. 1. p. 185.

† It is well known in what manner some foreign powers have taken the liberty to intermeddle in the elections of the Empire and of Poland, particularly in the elections of the Emperors Charles VII. and Francis I. And, as to Poland, one power or another has interfered with every election that ever has been made in the kingdom.

Kings of Hungary, Prussia, and Great-Britain have to give their voices at this election, as a right belonging to foreign powers; for, though they are sovereigns of nations, entirely independent of the Empire, yet, at the election they are heard as the Electors of Bohemia, Brandenburg, and Brunswick-Lunenbourg. According to the tenor of the *golden bull*, all foreigners, of whatever quality or description, are excluded from the place of election during the whole time of the negotiations; but, since the time of Maximilian II*. this regulation has gradually worn away; so that, now, even foreign ministers are suffered to remain, except only on the very day when the ceremony of the election is performed. But notwithstanding this custom, none of these ministers, not excepting those of France and Sweden, have a right to appear during the negotiations, and still less to assist at the conferences; unless their masters should be called in, as guarantees of the peace of Westphalia. The Nuncio of the Pope cannot interfere in any manner whatever.

SECT. 5.

Of the Election of the Pope.

THE election of the Pope, since the time of Alexander III. has passed from the people and the clergy
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* BUDER, *de legatis principum exterorum ad electionem Imperatoris*. See his *observat. juris*. n. 1. p. 33.

to the Cardinals*. In 1122 the Roman Emperors† first renounced the right of investiture by the formality of the ring and crosier, and afterwards they yielded that of confirming the election. They have now no right to interfere in it at all, except it be to grant, as *Avoyers* of the Roman Church, their protection to the Cardinals during the election. But the great Roman Catholic States, the Empire, France and Spain‡, have each of them a right to set aside, once at each election, a candidate proposed to be elected. Some doctors of canon law have denied the validity of this right, but it is so well established now-a-days that it is ever looked upon as obligatory§. Besides this, the Empire, Spain, Hungary, Poland, Sardinia, and Portugal, have a right to nominate, and the Republic of Venice|| has a right to present to the Pope, candidates for the Cardinals' hats, when they become vacant. The Pope has had many contestations concerning the extent of this custom¶, and it is essential to observe, that no Cardinal, nominated by a sovereign prince, has ever yet been chosen Pope**.

SECT.

* Chap. 6. *de electione*. Chap. 3. *de elect.* in 6to.

† EVERH OTTO, *de jure Imperat. circa electionem Pontificis Rom.* cap. 1.

‡ MOSER, *Staatsrecht*, vol. 3. p. 559.

§ HAEERLIN, *Rom. Conclave*, p. 153.

|| HAEERLIN, b. 6 p. 125.

¶ See, among other pieces, the letter of the Emperor to the Pope, 1690, MOSER, *Staatsrecht*, vol. 4. p. 8.

** Some pretend that such cardinals are not *Papable*, having "*il peccato originale*." See ROUSSET, *supplément au corps diplomatique*, tome 5. p. 4.—HAEERLIN, *Römischer Conclave*, p. 151.

SECT. 6.

Of the Election of the King of Poland.

WHATEVER may be the influence that many foreign courts have had in the election of the Kings of Poland, since that state has been elective, the cause is to be found in state policy rather than in the law of nations, No power in Europe has acquired a right to intermeddle in the election of a chief of this kingdom, except those who have guaranteed the new constitution; * and even they ought to keep within the bounds prescribed by every guarantee.

SECT. 7.

Of the Notification of the Accession to the Throne.

WHEN a prince mounts the throne, whether in right of succession or election, it is customary for him to notify his accession to all the foreign courts with which the state has any connexion, and for them to answer him by congratulations. Without this formality he would hardly be acknowledged, and this obliges princes to observe the custom even with their enemies, † although it has nothing obligatory in itself. ‡

Both

* MOSER, *Vernuch*, vol. 7. p. 353, and the following.

† Thus, during the war between Russia and Sweden, the Queen of Sweden notified her accession to the throne (in 1719) to Peter I, and the latter answered her by a congratulatory compliment.

‡ The Pope looks upon himself as having a perfect right to require embassies of notification from all the Roman Catholic princes. These embassies

Both the notification and congratulation are sometimes communicated in writing, sometimes through the medium of the ambassador in ordinary, and sometimes by a special embassy of one or more persons. Between equals a resemblance in this ceremony is observed as near as possible; but the sort of ceremony depends entirely on the customs of one court with another*. Powers have often been seen to refuse to receive a notification or congratulation†, when not communicated with that degree of respect which they thought themselves entitled to.

SECT. 3.

Of the Obligation of acknowledging an elected Sovereign.

FOREIGN powers cannot refuse to acknowledge as sovereign the prince who notifies his election to them, and whom the nation has acknowledged as lawfully elected. If the nation approve of the election, foreign powers have no right to enquire whether

embassies are called *embassies of obedience*. See BUDER, *de legatis obedientibus Roman. missis*, chap. 1-2.

* The Seven United Provinces congratulate the King of Great-Britain by an embassy of three persons. See *Mémoires d'AVAUX*, tome 4. p. 284. The Republic of Venice sends an embassy of two persons to congratulate some crowned heads. See MOSER, *Versuch*, vol. 3. p. 101. *Beiträge Z. G. R.* p. 36, and the following.

† See what happened on this point between the King of Sardinia and the Republic of Venice, 1774. MOSER, *Versuch*, vol. 3. p. 71.—*Beiträge Z. G. R.* p. 36, and the following.

ther it has been made according to the laws of the land or not.* But while the sentiment of the nation is divided on the subject, foreigners must be permitted to side in opinion with those whom they believe to have justice on their side.

SECT. 9.

Of the Rights of Foreigners with respect to the Form of Government.

As a nation is entirely free in its choice of a chief, so it is in fixing the extent of his power. Even after the constitution is framed, the nation, with its sovereign can at any time make whatever changes in it may appear necessary, whether tending to extend or retrench the authority of the sovereign, without furnishing the least pretext for foreign powers to intermeddle. And even should there arise disputes on the subject, in the interior of the kingdom, no foreign power can, with justice, interfere; because it is an affair entirely domestic. † However, motives of friendship and good neighbourhood may induce a prince to interpose his good offices. He may also be called in to

* Nevertheless, France refused, till the peace of Aix-la-Chapelle, to acknowledge Francis I. as Emperor; even after all the electors had successively acquiesced in the election.

† History furnishes us with several instances of important revolutions, which have been accomplished without the interposition of foreign powers: for example, the revolutions at Venice, 1298; in Denmark, 1660; in Sweden, 1772, &c.

to the aid of one of the parties whom in virtue of treaty he is obliged to assist*. Self-preservation or an acquired right † may also furnish him with a just motive for taking an active part in the dispute ‡. In any other case, no foreign power can be justified upon the principles of the law of nations, in attempting to force a state to change its constitution. It is also against every principle of law and justice for one state to endeavour, by dark and secret means, to trouble the tranquillity of another, which is in peace both within and without.

SECT. 10.

Of Revolts.

SUPPOSE that the interior troubles of a state come to an open rupture between the sovereign and his subjects, and that the whole nation, or part of it, should wish to drive him from the throne: or, suppose that a province, or territory, subjected to another state, refuses obedience to it, and endeavours to render itself independent: in either of these cases, there

* For instance, France and Sweden are in this predicament, as guaranties of the peace of Westphalia; the imperial courts and Prussia, as guaranties of the constitution of Poland; France, Sardinia, and the republic of Berne, as guaranties of the pacification of Geneva, 1781.

† If, for instance, a power, in ceding a province to another, stipulates that the ceded province shall preserve its privileges, as did Sweden, in ceding several provinces to Russia, 1721, and 1743.

‡ MOSER, *Abhandlungen verschiedener Rechtsmaterien*, St. 1-4.

there are two points, which must be separated in determining on the conduct that foreign powers ought to observe: 1. the conduct to be observed towards the old or new sovereign, or towards the people who, after having revolted, have declared themselves independent; 2. the assistance to be given to either party.

With respect to the first of these, a foreign nation, not under any obligation to interfere, does not appear to violate its perfect obligations nor to deviate from the principles of neutrality, if, in adhering to the possession (without examining into its legality), it treats as sovereign, him who is actually on the throne, and as an independent nation, people who have declared, and still maintain themselves independent. The opposite party, however, never fails to complain of this conduct, as long as he does not himself acknowledge, by treaty, the validity of such possession or independence *.

As to the second point; *viz.* the assistance to be given to either party; when once obedience has been formally refused, and the refusing party has entered into the possession of the independence demanded, the dispute becomes the same as those which happen between independent states; consequently, any foreign prince has a right to lend assistance to the party whom he believes has justice on his side, whether he

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* ACHENWALL, *de jure in æmulum regni vulgo prætendentem*, Marburg, 1747. 4to.—See STECK, *von Erkennung der Unabhängigkeit einer Nation*. See his *Versuche*, 1788. n. 8. p. 49, and the following.—GUNTHER, *Europäisches Völkerrecht*. vol. 1. p. 78.

be obliged so to do by treaty, or not; provided, however, that he has not promised to observe a strict neutrality. But, as to espouse an unjust cause is unlawful, and as it is impossible that the opinions of the two parties should not differ with respect to the justice of their cause, it is also impossible that those against whom succours are directed should not consider such a step as a departure from neutrality, and as an injury. In fact, whether we speak of the passive conduct observed in such circumstances, or of the succours furnished, by foreign powers, it is state policy that generally decides, whether he who feels himself offended shall dissemble, or, at most, complain of the injury, or whether he shall seek retaliation by violent means*.

When a nation acknowledges, expressly or tacitly, the independence of the revolted state, or a prince renounces the throne he occupied, foreign powers have no more right to oppose the revolution, nor is even their acknowledgment of its validity necessary†.

* The conduct that Great-Britain observed, particularly towards France, Spain, and the Pope, after the revolution of 1688, and that which she observed towards several other powers, after the colonies of North America declared themselves independent, may serve to illustrate this subject

† DE STACE, in the work already mentioned in this section, p. 49.

CHAP. III.

OF THE DIFFERENT RIGHTS OF SOVEREIGNTY BELONGING TO THE INTERNAL GOVERNMENT, AND THEIR EFFECT ON FOREIGN POWERS, AND THEIR SUBJECTS.

SECT. 1.

Division of the Rights of Sovereignty.

ALL acts of sovereignty tend to one and the same object, the good of the state ; but we ought to distinguish the different means that are made use of to accomplish this object, and consider them as so many particular rights collectively placed in the hands of the sovereign. Thus, then, we may distinguish those which concern the internal government from those which concern the external, and separate, in the first, the divers branches of the legislative power, from those of the executive power.

In general, all the rights which relate to the internal government belong absolutely to the sovereign, and extend to every person and every thing in the territory ; but here they stop ; they can extend no further : a sovereign is not only incapable of exercising any act of sovereignty on a foreign territory, but even those he exercises at home produce no effect in fo-

reign countries. Nevertheless, in examining the present political state of Europe, we see that, from treaty or from custom, foreign powers have a right to demand for those of their subjects who go into other states, or who have transactions with subjects of other states, many things that the sovereigns of such states would not, by the universal law of nations, be obliged to suffer, omit, or do, in their favour. We see also, that the sovereign of one state adopts measures which very often produce, in other states, an effect that, strictly speaking, he could not require. The reciprocal rights which sovereigns and their subjects enjoy with the sovereigns and subjects of foreign countries, resemble in their nature the rights of *partial sovereignty**, except that these latter rights are sometimes unequal, whereas the former are always general and reciprocal.

To know exactly what these reciprocal rights are, we must examine the principal rights of sovereignty, belonging to the internal government.

SECT. 2.

Of the supreme Police.

THE sovereign has a right to forbid all foreigners to pass through, or enter his dominions, whether by land or sea, without express permission first obtained,
even

* ENGELBRECHT, *de servitutibus juris publica*. Sect. 1. See an explanation of the rights of partial sovereignty, Sect. 33 of this chapter.

even if such passage or entry should not be prejudicial to the state *. Now-a-days, however, no power in Europe refuses, in time of peace, to grant such permission to the subjects of another power; nor is it even necessary for such subjects to ask permission to enter a state, and bring their property into it. Thus, then, the liberty of entry and passage may be considered as generally established between the powers of Europe †; and it is particularly so among the states of the German Empire ‡. But as this liberty ought not to become prejudicial to the state, every power has reserved to itself the right, 1. to be informed of the name § and quality of every foreigner that arrives: and, to this end, passports ||, taken at the place from whence a foreigner comes, ought to be regarded as authentic, provided they have been granted by persons having authority to grant them, such as sovereigns, magistrates, or foreign ministers; 2. each state has a right to keep at a distance all suspicious persons; 3. each state has a right to forbid the entry of foreigners or foreign merchandises, of a certain description, for a time or for ever, as circumstance may require; 4. the liberty of entry and passage extends to individuals only; a

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* G. L. BOHMER, *de jure principis libertatem commerciorum restringendi*, § 16.

† Whether by treaty or otherwise. It often happens that mention is made of this subject in treaties of peace.

‡ By the peace of Westphalia, art. 9. § 2.

§ Upon the right of travelling *incognito*, see Mr. MOSER, *Versuch*, v. 6. p. 44.

|| J. C. LANGIUS, J. G. TEXTOR, *de literis comratus*, Heidelb. 1679. J. W. ENGELBRECHT, *de jure peregrinatum*, Helmot. 1711. 410.

number of armed men *, before they enter the territory of a foreign state, must have an express permission from the sovereign thereof. This takes place also with respect to vessels of war entering a port, to take shelter under the cannon of a fortress, unless this permission has already been granted by treaty †.

SECT. 3.

Continuation.

THE supreme police extends to every person and every thing in the territory; foreigners are subject to it as well as the subjects of the state, excepting only such foreigners as enjoy the right of *exterritoriality*, and who, consequently, are not looked upon as temporary subjects of the state.

As all public institutions in which the subjects may partake, interest the state, more or less, the sovereign

* Thus, permission must be obtained for the passage of armed escorts of criminals, of recruits, and particularly for every corps of armed troops. The necessity of asking such permission has often been expressly stipulated for by treaty: for instance, in the truce between Spain and Holland, 1609, art. 10; in the treaty between Great-Britain and Holland, 1667, art. 3, 4; between Portugal and Spain, 1715, art. 19, &c.

† The maritime powers have often made treaties to fix the number of vessels of war that may enter or pass without special permission. This number varies greatly; in the treaty between Denmark and the Republic of Genoa, 1756, art. 12, it is fixed at *three*; in the treaty between Great-Britain and Spain, 1667, art. 16, it is fixed at *eight*, &c. Humanity generally excepts cases of urgent necessity.

vereign has a right to take cognizance of them, and to suffer those only which he may judge convenient for the state. Foreigners, then, have no more right than the subjects of the state to open lotteries, play-houses, &c. without permission from the sovereign; and, moreover, the sovereign may forbid his subjects being interested in such institutions in other countries*.

SECT. 4.

Police.

THE care of hindering what might trouble the internal tranquillity and security of the state, which is the basis of the *police*, authorizes the sovereign to make laws and establish institutions for that purpose. And as every foreigner, living in the state, ought to concur in promoting this object, even those who enjoy the right of *exterritoriality* (such as sovereigns and ministers), cannot dispense with observing the laws of police †; although, in case of transgression they cannot

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* If little states do not always make this prohibition in express terms, it is an effect of a policy that their weakness renders necessary. The right is incontestable, and is every day exercised by the great states. The Seven United Provinces, for instance, forbid their subjects to become interested, in any manner whatever, in any foreign company trading to the East-Indies. See ROUSSET, *Supplément*, vol. c. 2. p. 409. Compare this with what was done at Hamburg, 1720. See LANGENBECK, *Seiff und verrecht*, suppl. 6. add. let. A. p. 424.

† It may, however, sometimes become a matter of doubt, how far a foreign minister is obliged to conform to a law of police, which interferes with his ministerial functions. See a remarkable instance in *les mémoires du comte d'ESTRADES*, t. 2.

be punished like born or temporary subjects of the state.

SECT. 5.

Of protecting the Honour of Foreigners.

AMONG an infinity of objects of internal police, we may reckon the care that ought to be taken that no one does nor publishes any thing that may be injurious to a foreign state, whether it be in the person of the sovereign or of the subject. This obligation is acknowledged by all the powers of Europe*.

Foreigners can, however, require no other satisfaction than what the constitution of the state would permit, if the offence had been committed against its own sovereign or subjects†. Besides, we must not confound the freedom of political opinion with the licentiousness of a libel, levelled immediately at the reputation of a foreign sovereign or subject.

SECT. 6.

Of Emigration.

ONE of the principal objects of police is to hinder the subjects from emigrating in too great numbers.
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* See, for instance, *Memo. hist. et pol.* 1748, t. 2. p. 157.—MOSER, *Versuch*, t. 1. p. 202, et suiv. t. 8. p. 39. ADELUNG, *Staatshistorie*, p. 2. v. 1. p. 287.

† See the answer that was made by England, relative to the satisfaction demanded by France concerning the trial of Mr. (Mlle) d'EON, MOSER, *Beiträge*, v. 3. p. 284.

C. III.] THEIR EFFECTS ON FOREIGNERS. 89

It is for the public, universal *, or particular, law †, to determine to what degree a sovereign is permitted to restrain the natural liberty of those subjects, who wish to quit the territory for a long time, or expatriate themselves entirely. A foreigner, as long as he remains so, and has not contracted debts, or committed crimes, is entirely at liberty to quit the state when he pleases; it is only in case of collision, reprisal, or war, that a state is justifiable in detaining a foreigner, against his will. This liberty, founded on the universal law of nations, is confirmed, and even extended, by a great number of treaties ‡; and, accordingly, it is rarely violated. But a foreigner, formally naturalized §, has no more right to this exemption from restraint, than those who are born subjects of the state, unless he has made express or tacit conditions on the subject ||.

SECT.

* GROTIUS, *du droit de la G. et de la P.* l. 2. c. 5. § 25.—PUFFENDORFF, *droit de la N.* l. 8. c. 11. § 2.

† See, with respect to Germany, the peace of Westphalia, art. 5. § 36, and J. J. MOSER, *Landeshoheit in Polyceysachen*, chap. 6. § 5. E. LETH, *commentaire de jure emi, grandi ex uno territorio in aliud Germania*, Gottingen, 1778, 4to.

‡ Almost all the treaties of commerce contain articles on this subject, and by the greatest part of them foreigners are permitted to quit the state, even in case of a rupture.

§ See, on the effect of such a naturalization, Mr. MOSER, *Versuch*, v. 6. p. 8.

|| The disputes between France and Holland, at the time of the revocation of the edict of Nantz, may furnish an instructive example on this head. See *les mémoires du comte D'AVAUX*, v. 5. p. 169. 172. v. 6. p. 14.

SECT. 7.

Of the Legislative Power.

THE right of prescribing *normes*, or obligatory regulations, to the subjects; in other words, the *legislative power*, extends even to temporary subjects.

In general, where there have been no exceptions made for the advantage *, or disadvantage of foreigners, they are subject to the general laws of the country, and their private affairs are decided in the common way. The private condition of foreigners might, then, greatly vary, when they pass from one country to another, or when they transact business with foreigners; and, indeed, it must be allowed that the differences are numerous; but, the law of nature forming the basis of all legislation, and the Roman law, which is conformable to the law of nature in so many points, having acquired an authority, more or less extensive, in almost all the states of Europe †, we must
not

* Formerly the laws of different nations bore pretty hard upon foreigners; often harder than could be justified by the law of nature, in its utmost rigour. Even in private affairs odious distinctions were made between foreigners and the natives. See a remarkable example, GUTSCHMIDT, *mercatura legum auxilio inuanda ratio*, § 12. and FRANK, *Instit. jur. Gambialis*, b. 2. c. 3. § 4. *Mantisse*, § 4.—But, at present, sound policy, and the experience, that retaliation soon follows these legislative partialities, have contributed to bring the rights of foreigners and natives nearer to an equality.

† The Roman law ought to be considered as the subsidiary law in Germany, Switzerland, Holland, France, Italy, Spain, Portugal, Poland, and

not be astonished if we find a marked resemblance in the civil law of all the well regulated nations of this quarter of the world.

SECT. 8.

Of the Effect which the Laws have on Foreigners.

LAWS have not, properly, any effect, but in the country for which they have been framed. However, 1. those which relate to the state, and to the personal condition of the subjects, are acknowledged in foreign countries (See sect. 13 of this chap.); 2. a foreigner who is plaintiff against a subject, must abide by the decision of the laws of the country in which he pleads; 3. when the validity of an act, done in a foreign country, is in question, it ought to be decided by the laws of that foreign country*; 4. sometimes the parties agree to be determined by such or such a law of a foreign country; 5. a foreign law may have been received

and in some of the tribunals in Great-Britain. See BLACKSTONE'S *Commentaries*, v. 1. p. 83. v. 4. p. 265. edition of 1768.—GATZERT, *de jure communi Angliæ*, Gottingen, 1765, and, in general, see ARTHUR DUKE, *de usu et autoritate juris civilis Romanorum*, l. 2. Besides, in some places the Roman law is made use of in preference, in what concerns foreigners. See DUKE, l. 2. c. 4. It is adopted particularly in affairs of commerce and navigation. See L'ESTOZE, *Auszug der Historie des Allgemeinen und Preussischen Seerechts*, chap. 1.

* FRANK, *de conflictu juris Cambialium diversorum*. *Manissa Instit.* j. c. camb. v. 1, 2, 3. HERTIUS, *de collisione legum*. See his *Opuscula*, v. 1. p. 169, and the following. COCCII, *de fundata in territorio et plurimum locorum concurrente potestate*.

ceived as a subsidiary law *; 6. foreigners sometimes obtain the privilege of having their disputes decided according to the laws of their own country †.

SECT. 9.

Of the Publication of Laws.

No sovereign is obliged, strictly speaking, to publish, in his own territory, the laws, or ordinances of the sovereign of another state. However, when such a publication is requested, it can hardly be refused now-a-days ‡, unless there be something in the law itself which renders it improper.

SECT. 10.

Of Privileges.

THE right of granting privileges may be looked upon as an annex to the executive power. Like this power

* Formerly, it was not rare to see, for instance, the laws of the city of Lubec, the Saxon law, &c. received as the subsidiary law of other states; and, even now, we find instances of it, particularly in Germany, in the feudal law, in that of bills of exchange, &c.

† Thus a ship, although at anchor in a foreign harbour, preserves its jurisdiction and laws. See VATTTEL, *droit des gens*, l. 1. c. 19. § 216. By land also, many consuls have a right to determine the disputes that may arise between subjects of their sovereign, and according to the laws of their own country. See DE STAECK, *Handelsverträge*, 1782. Idem, *von den Consulen handelnder Nationen*, in his *Versuche*, 1772. p. 119, and the following. See, lower down, the chapter on commerce.

‡ MOERER, *Versuch*, v. 8. p. 31.

power it can extend no further, with regard to the obligation produced by the privilege, than the subjects of the state; because such an obligation can be imposed on those only from whom the sovereign has a right to exact obedience; but a sovereign may bestow privileges on foreigners, and authorize them to enjoy them in his territories*. A privilege granted in a state, may have effect on foreigners, because they cannot, in the territory where it has been granted, undertake, or obtain, any thing that is contrary to it.

But, out of his territory, a sovereign cannot bind foreign subjects by any privilege that he may grant. Formerly the Popes and Roman Emperors † often took upon them to grant privileges in foreign states; but at present, the right of the first is not only confined merely to spiritual affairs, but even there his power is nearly as limited as in temporal affairs. The Emperor grants no more privileges of this sort, neither has he a right so to do more than the other crowned heads.

SECT. 11.

Of the Right of conferring Employments, &c.

THE sovereign not being able by himself to occupy all the different departments of the administration, ought to have a right to appoint others to assist him.

* BOHMER, princip. jur. publ. univ. p. sp. l. 2. c. 5. § 58,—MOSEK, *Vermäch.* v. 7. p. 275.

† MOSEK, *Staatsrecht*, v. 1. p. 327.

him. It is right also that he should be the distributor of honours and dignities. He may admit foreigners to employments in his government, or he may exclude them from it; and he may forbid his subjects, as long as they wish to remain so, to serve in foreign states, whether in a military or civil capacity; and this without giving any just cause of umbrage to foreign powers, provided that this prohibition be general, and not directed against any particular state. It is very rare, however, that sovereigns forbid those of their subjects, who are not already in the service of the state, to serve in foreign countries, even in a military capacity. But, it must be remembered, that such persons still preserving the quality of subjects, preserve also their obligations as such; that the sovereign may recall them when he stands in need of them; and that, above all, he may forbid them to serve against the state.

SECT. 12.

Of the Right of conferring Dignities.

EVERY employment bears with it the dignity and honours that the sovereign has been pleased to attribute to it. Besides, the sovereign may dispose of simple titles and dignities*, and add to them such personal prerogatives

* Among dignities, that of the nobility, and of the different divisions that ought to be made of it in different states, merit particular attention.

prerogatives as he judges proper. It belongs to him also to settle all matters of precedence among his subjects. But the dispositions that the sovereign makes, relative to employments, titles, dignities, and precedence, have, strictly speaking, no effect in foreign countries; so that, 1. no sovereign has a right to require foreign states to attribute to his subjects, the dignity, honours, and precedence, that he has thought proper to grant them at home; 2. no sovereign can confer a title or dignity on any one who is the subject of a foreign state, against the will of the sovereign of that state.

SECT. 13.

Of the Effect of this Right with regard to Foreigners.

By observing the practice of European nations, we see, 1. that with respect to military employments and dignities (concerning which almost all the christian states of Europe have placed themselves nearly upon the same footing), no sovereign refuses to cause the subjects of another to be treated according to the military title that their sovereign has conferred on them, and to grant them the honours and precedence answerable to their rank. The quality of the sovereign who has placed them in that rank, has no influence in matters

Part of the titles that are generally classed among the superior nobility, such as Duke, Marquis, Count, were originally employments accompanied with dignity; but, in process of time, these employments are become, in many states, simple dignities.

matters of precedence, although it may sometimes give rise to arbitrary distinctions. 2. We see that the same is observed with respect to civil employments*, and simple titles and dignities†, except that, as far as relates to precedence, it is often almost impossible to give a foreigner exactly the same rank that he possesses in his own country‡, because of the difference in the civil

* The functions of an employment can be exercised on subjects only, and not to the prejudice of another sovereign on foreigners out of the territory. It was, then, extraordinary enough to see, formerly, the notaries of the Emperor and the apostolic notaries of the Pope, exercising their functions in the different states of Europe. See Du Fresne, in his *glossary*, under the word *notarius*. MASCARDUS, *de probationibus*, v. 2. concl. 926. n. 19. The different states have successively reformed these abuses by suppressing the exercise of the functions of the imperial notaries, as did England in 1320. See RYMER, *acta publ.* v. 3. p. 829. Scotland in 1469. See PUTTER, *specim. juris publ. mediæ ævi*. cap. 11. § 112. France in 1490. See Du Fresne d. l. l. a. The functions of the papal notaries have also been retrenched in many states of Europe. See STÖZGER, *de notariis inventar. conscientibus*, at Strasburg, 1778. p. 16.

† We must not confound the acknowledgment of a dignity, which it is evident that a foreign sovereign has conferred, with titles which another state only has condescended to consider as sufficiently proved. A man who calls himself a foreign prince, &c. and who is acknowledged as such in one state, is not on that account to dispense with proving his title in another state, and particularly in that from which he pretends to hold his dignity. Circumstances must decide how far the acknowledgment of another state may lead to a presumption in his favour.

‡ He, for instance, whom a sovereign has created Count, or Councillor of state, will be acknowledged as Count, or Councillor of state, every where; he will every where enjoy nearly the same honours (not rights belonging to the constitution) that he enjoys in his own country; but it does not follow from thence, that he is the equal of all those who bear

civil arrangements of the several states, and the insufficiency of the regulations they have adopted on the subject of civil rank. This difficulty is much diminished in those states where the civil employments are put upon the same footing as the military ones.

SECT. 14.

Continuation.

THOUGH a sovereign may forbid his subjects to accept of any title or dignity from a foreign sovereign, yet this prohibition is seldom extended to subjects who are not already in the service of the state; and there are few states where the subjects, even in the service of the state, are forbidden to accept of titles or dignities *

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bear the same title, neither as to rank or prerogative. It is easy to perceive, how difficult it must often be to determine even on the principles that ought to be followed, in deciding on the rank that is due to him with respect to others. The distance between him and the person of his sovereign cannot, at least always, determine the point. The rank of the sovereign alone decides nothing. That a reigning Duke, Count, &c. ought to take the lead of those of the same rank who are only subjects, is clear enough from reason, analogy, and custom. A man in place also ought to take the lead of another who has only the title of it; but these are far from being all the doubtful cases. See on the precedence of individuals, J. C. F. HELLBACH, *meditationes juris provedria moderni*. Lips. 1742. 4to.

* The Emperors have conferred on a great number of foreigners the dignity of Prince, or Count of the Holy Empire; but rarely, and very lately only, those dignities have been conferred on Germans by foreign powers. This is an observation of Mr. MOSER, *außerwärtiges Staatsrecht*, p. 321.

from foreign powers *, although the latter ought to obtain the consent of their sovereign, before they make use of this prerogative.

SECT. 15.

Of the Rights of the Sovereign as to the Property in the Territory. Of Imposts.

THE expenses of government ought to be defrayed by all those who enjoy the protection of the state. When the revenue of the domains is not sufficient for the purpose, imposts must be raised. A foreigner enjoying the protection of the state, cannot, while he remains in it, expect to be entirely exempted from imposts. Besides, it may be made a condition of his admission. He may even be loaded heavier than the born subjects of the state, if no treaty between this state and his own specifies the contrary. † Yet, as far

* The Republic of Venice, however, does not permit any member of the sovereign power to accept of a foreign dignity. See LE BARR, *Vorlesungen*, v. 1. p. 200. In Poland it is not permitted for the nobility to take on them any title of high nobility bestowed by foreign sovereigns. See TOTZ, v. 2. p. 342. Many states of the Empire have placed themselves upon the same footing with respect to titles and employments bestowed by foreign princes or states; but they could not do the same with regard to dignities of nobility, at least such as are conferred by the Emperor, although, for good reasons, they may forbid individuals from making use of them. See MOSER, *Staatsrecht*, v. 5. p. 402. and the following.

† This point is the object of the greatest part of the treaties of commerce, and it is often agreed to place the subjects of the contracting parties reciprocally upon the same footing with regard to impost.

far as concerns personal imposts, it is customary not to exact them from foreigners, till they have for some time been inhabitants of the state. * Imposts on real estates, on the contrary, † and duties on the entry and consumption of merchandises, ought to be paid indiscriminately by foreigners as well as subjects; unless they can prove an exemption ‡. Consequently the tolls that are imposed for the maintenance of institutions of public utility, such as turnpike roads, canals, &c. are collected indiscriminately from those who profit from such institutions.

SECT. 16.

Of Duties.

THE sovereign, not being obliged to permit the entry and passage of foreign merchandises, may require payment for such entry in affixing certain duties.

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* This term ought to be fixed by the laws of the country. In Lower Saxony, for example, a non-privileged foreigner who takes furnished rooms, or a house, begins to be taxed the second month of his residence. See WILICH, *Auszug aus den Braunschweig-Lüneburgischen Landesverordnungen*, p. 67.

† The custom that subsisted formerly in some parts of Germany of not making foreigners pay taxes for their real estates, is destitute of solid foundation, and is no longer observed, except in a very few places. MYNSINGER, *observationum centuria*, 5 obs. 22. (1615).

‡ We shall see in the sequel to what degree this exemption takes place in behalf of foreign princes and ambassadors. The immunities enjoyed by colleges, the military, &c. usually concern personal imposts only.

These duties might be raised arbitrarily if policy did not oppose it, and if their extent was not fixed in the treaties of commerce *. The demi-sovereign states of the Empire are more particularly restrained in this respect by the laws of the Empire †.

By the same principle of right that the sovereign imposes conditions on the commerce of foreigners in his territories, the tax of *étape* ‡, and many other taxes, may be justified ; which taxes, though lucrative to the state, are very injurious to the liberty and commerce of foreigners. But, the fear of retaliation, or other reasons of state, hinder them very often from being imposed. The imposition of them is sometimes withheld also by laws and treaties §.

SECT.

* The arrangements concerning duties, form one of the most important articles in treaties of commerce ; but the variation to which they are subject, obliges the contracting parties to form a tariff for a few years only, even when the treaty itself is made for a much longer time.

† See the Capitulat, Imp. art. 9. § 1, 2, 2, 2, 2, 13, 13, 17.

‡ G. L. BONAER, *de jure principis libertatem commerciorum restringendi*.
§ 20. BASSIAC, in his notes upon PUFFENDORF, l. 3. c. 2. § 6. note 2.
See, besides, HUBERUS, in his notes on PUFFENDORF.

§ Thus the tax of *étape* is restrained in the Empire, as far as relates to establish a new one, or extend that which subsists. See the Imperial Regulation, art. 2. § 17, 22.

SECT. 17.

Of the Droit d'Aubaine.

FROM the right of excluding all foreigners from the territory is derived another right, the *droit d'aubaine* *. In virtue of this right, the heritage of a foreigner, who dies without leaving heirs in the country, falls to the sovereign, or to the chief magistrate of the place where he dies †, to the exclusion of the heirs that he may have out of the country. This singular right which was formerly exercised with the utmost rigour towards all foreigners ‡, particularly in France, and, from her example, in all the states of Europe, has been, in process of time, pretty generally abolished by law or treaty. Even France § exercises it now to-

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* For the etymology of the word *aubaine*, see Du CANGE, in his *Etymol. Vocab. Ling. Gall.* and MENAGE, *dict. etymologique*, under the word *aubaine*. For the origin of the *droit d'aubaine*, see Montesquieu, *esprit des lois*, liv. 21. c. 17. See also BONNHOFER, *de jure detractus*, c. 2. § 1. —4.—SCHUBAC, *de Saxorum transport*, sub. cas. M. c. 4. § 5.

† In France it is the king alone who exercises this right, though, formerly, the nobility exercised it also. See BACQUET, *du droit d'aubaine*, in his works, tome 1. p. 4. c. 27. In Germany it was frequently exercised by cities, and even by the nobility.

‡ Foreign princes even were not exempt from it. See Du PUY, *traité touchant les droits du roi*, tome 1. p. 975.

§ The catalogue of treaties, letters patent, &c. by which France has renounced this right, in behalf of many powers, and almost all the states of the Empire, may be seen in Mr. de ST. GERENS, *de uni albinagii in Gallia*, Argentor. 1778, 4. SCHÖLOZER, *Staatsanzeigen*, Heft. 21. 1787, p. 239. and the following.

wards a very few states only ; and almost all the other states * have laid it totally aside, except that they may now and then exercise it by way of retaliation. Sometimes certain classes of foreigners are exempted, or an exemption is permitted in certain cases, which, however, must take place to the prejudice of the sovereign, and not to the prejudice of a third person †.

SECT. 18.

Of the Right of Deduction and Tax on Emigration.

To the right of *aubaine* has succeeded the more moderate one of *deduction* (*jus detractus*), in virtue of which the sovereign, or other magistrate, retains a part of the heritage, which falls to foreigners out of the state, in permitting them to succeed to the rest. The exercise of this right is still more general, even among the states and imperial cities of the Empire : however, in a great number of treaties ‡, it has been abolished, or the contracting parties have agreed not to exercise it, except by way of retaliation.

The *tax on emigration* is paid in many places by all those, whether born subjects or naturalized foreigners,

* For the exercise of this right in Germany, see MOSER, *auswärtiges Staatsrecht*, p. 331.

† PUFFENDORFF, *animadv. juris*, v. 1, animadv. 53.

‡ BONNHOFER, *de jure detractus*.

ers *, who quit the state with their property, in order to settle themselves in another country †. Many motives seem to justify this tax ; yet it has been abolished in a great number of states by particular covenants, or, at least, abolished so far as not to be raised but by way of retaliation.

SECT. 19.

Of the Judiciary Power.

ONE of the most essential rights in the hands of the sovereign is the *judiciary power*. It extends indiscriminately to all who are in the territory, and the sovereign only is the source of it. But, it must be remembered, 1. that there are persons whose exterritoriality exempts them from this jurisdiction, such as foreign princes and their ministers, with their retinues; 2. that the sovereign sometimes grants to foreigners the privilege of being tried by their own judges, under the name of consuls, or some other title,

The tribunals of a state being intended to set aside all acts of violence between individuals, foreigners, even though they should not live in the territory, are

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obliged

* With respect to these, the number of years that a stranger must remain in a state, to become a subject of it so as to be liable to this tax, is generally fixed, and in that case the hardship is not so great.

† In Germany this tax is raised frequently enough, even by municipal cities, and in some places by the nobility, on all those who retire from their jurisdiction. See PUTTER, *institutions juris publ.* (1767) § 366.

obliged to address themselves to these tribunals to obtain justice against the subjects of the state; and if those against whom they proceed should be only temporary subjects, they must nevertheless plead at the same tribunals. But, on the other hand, the sovereign is, to all intents and purposes, obliged to administer justice to them as promptly, and as impartially as if they were his own subjects.

Foreigners have never a right to demand a preference in judicial proceedings, nor have they a right to demand judgment by a special court *. And if (in cases where the competence of the judge is indisputable) the cause has been determined according to form, and the judge is not suspected of having acted contrary to his duty, the sentence that he has pronounced in the last resort cannot be called in question by any foreign power, whose subjects may be dissatisfied with the decision †. This principle is justified by the reciprocal advantages of nations.

But

* In some places special courts have been instituted, either for a constancy or for certain times in the year, to judge the causes of foreigners; such, for instance, are seen at the great fairs, and in great commercial towns; but this must be considered as an effect of the good pleasure of the sovereign. No foreigner has a right to demand such a mode of trial, unless it has been fixed on by treaty.

† See, on this subject, the pieces that appeared in the dispute between England and Prussia, concerning the decision of the English court of Admiralty on the prizes made from the Prussians by the English privateers, in 1745 and the following years. *Exposé des motifs qui ont déterminé le roi de Prusse à mettre arrêt sur les capteurs dus sur la Silésie, à la Haye, 1755, 4.*

But a formal refusal of justice, or an unusual delay, is a violation of the law of nations. And if a foreign subject has reason to complain of it, his sovereign may not only retaliate, but may make use of all the means employed by nations, when their rights are invaded by others. He may make reprisals *, and even declare war, to oblige the state which has thus failed in its duty to make a proportionate satisfaction.

SECT. 20.

Of the Effect of civil Sentences.

IN determining the effect that a sentence pronounced in one state may have in other states, it is necessary to distinguish two points: its execution and its validity. With respect to the first, no sovereign is positively obliged to execute in his territory a sentence that has been pronounced out of it †. Nevertheless, 1. the particular connexion subsisting between several

In German, *Anführung der in dem allgemeinen Völkerrecht begründeten Ursachen*, &c. at Berlin, 1752, 4. *The Duke of Newcastle's letter by His Majesty's order to Mr. Mischel*, Lond. 1753. translated into French and German. *An impartial foreigner's remarks upon the present dispute between England and Prussia*, in English and German, 1752, 4. An extract from these pieces is to be found in *Mercure, hist. et pol.* 1753, tome 1. p. 217. and in *Mosca, Versuch*, vol. 4. p. 441.

* See the dispute between Holland and Venice concerning the affairs of Chomel and Jordan, in the *Gazettes of Leyden*, 1708. See *HABESKAMP, Skizzen von Holland*, 1. Stuk, p. 158. 2. Stuk, p. 41.

† J. H. BOHMER, *principi. jur. publ. univ.* P. special, l. 1. c. 1, § 6.

ral states, and in virtue of which they form a composed state, may oblige them to execute reciprocally every sentence pronounced by a competent judge *. 2. Sometimes states enter into reciprocal engagements by treaty, for the purpose of executing sentences. 3. Friendship and utility often induce a state not to refuse the execution of a sentence, pronounced by a competent judge, when the usual request has been made with an offer of rendering the like service †.

With respect to the validity of a sentence, pronounced in a foreign territory; if such sentence has been pronounced by a judge every way competent, and is the result of a trial conducted in the usual mode, according to the laws that ought to serve as a basis for the decision, and if the cause has been judged definitively, no foreign judge can admit of a second suit on the same cause, between the same persons: the sentence has the same force as the awards of arbitrators, fixed on by the parties, ought to have in a state of nature ‡.

SECT,

* *Letter of Mr. Benningen to Mr. de Witt, 15 Oct. 1666.*

† But the Seven United Provinces seem not to have adopted this arrangement. In Germany there is no general law providing for the execution of sentences, pronounced out of the territory, by particular tribunals of the empire; and if these executions take place between some states, it is in consequence of particular treaties or of simple custom.

‡ See, however, what passed in the trial between the Marchioness of *Favos* and the Prince of *Anhalt Schaumbourg*. PUTTER, *Rechtsfälle* v. 3. p. 28, and the following. MOSER, *Zusätze zu seinem neuen Staatsrecht*. v. 2. p. 558.

SECT. 21.

Of voluntary Jurisdiction.

THE same principles hold good with regard to the jurisdiction commonly called *voluntary*, in opposition to *contentious* jurisdiction. This jurisdiction cannot, any more than the other, be exercised over persons and property out of the territory : * while, within the territory, on the contrary, it extends to foreigners as well as subjects. But the acts that a judge, invested with this jurisdiction, has been authorized to pass, are considered as valid, in whatever country they are to be put in execution. †

SECT.

p. 553. And in the trial of the descendants of the French prince, *Nassau Siegen* against the house of *Nassau*. See *Deductions bibliæ thek.* p. 1. p. 199. 922.

* HANNESEN, *de jurisdictione*, p. 46. and the following.

† Thus no magistrate can constitute guardians, otherwise than relatively to the property submitted to his jurisdiction. Even the magistrate where the minor lives, cannot authorize a guardian for the administration of property in a foreign country; unless authorized so to do by treaty. See, for instance, the treaty between France and Holland, 1739, art. 37. And even letters of emancipation can have no effect with respect to property situated in a foreign country. But, on the contrary, as to the act by which such guardian has been appointed, or by which the minor has been emancipated, it is every where looked upon as valid. For a power of attorney, given to a foreigner, to be admitted, it suffices, in the first case, that the guardian should produce his authority; and in the second case, that the minor should prove that he has been emancipated in his own country.

SECT. 22.

Of the criminal Power.

THE end of civil society requires that the sovereign should have a right to forbid actions hurtful to the state and its members, to award penalties for such actions, apprehend and judge the criminals, and execute the sentence pronounced on them. These rights collectively taken, together with what is annexed to them, form the criminal power. This power extends to every one in the territory, whether subject or foreigner. So that, though foreign sovereigns and their ministers may not be subject to the jurisdiction of the state, yet the sovereign is justifiable in taking such measures against them, as are necessary to save the state from the dangers into which their crimes would otherwise plunge it. (See the chapter on Embassies).

A sovereign can punish foreigners, whether they have committed a crime in his dominions, or whether, after having committed it in a foreign country, they seek shelter in his dominions. * In neither case is the sovereign perfectly obliged to send them for punishment to their own country, nor to the place where the crime was committed; not even supposing they have been condemned before their escape. According
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* G. L. BOHMER, *de delictis extra territorium admittis*, elect. v. 38
cx. 20,

to modern custom, to send a criminal back to the place where the crime has been committed, is more frequently granted, on the request of a power who offers to render the like service, * than to send one from the place where the crime has been committed to his own country, or to some court of justice of his own country. This latter is never granted, except in virtue of treaty; or if it be, the sovereign must have an extraordinary deference for the power who makes the request. † The states of the Empire generally ‡ observe the same rules in this respect, as independent states, and never grant these requests, but in virtue of treaties (of which there are a considerable number), or out of a reciprocal inclination to be serviceable to each other. §.

SECT.

* We often see instances of this. See a recent example in the *Hamb. Correspond. n. 3.* Beil, 1767. But if a state never refused to give up a criminal, it may be doubtful sometimes, when there are many powers applying, to which it ought to give the preference. See what happened at Dantzick relative to the Count de la Sale. ADELUNG, *Staathistorie*, v. 4. p. 208, and the following.

† Mr. de VATTTEL has observed that the Swiss do not refuse requests of this kind. See his *droit des gens*, l. 2. c. 6. § 76. See other instances in MOSER, *Versuch*, v. 4. p. 123. v. 6. p. 428.

‡ The only exception, where the laws have provided for giving up criminals, is that to be found in the Register of the Empire for 1641, § 47. WAHL, *de foro arresti privilegiato*, § 25.

§ REÜSS, *de juribus et obligationibus specialium Rerum-publ. German.*, *inter se in exercenda jurisdictione criminali obviis*, Stuttgart, 1767. 4.

SECT. 23.

Of the Obligation of exercising this Power.

ON the other hand, the sovereign, owing the protection of the state to foreigners as well as to his subjects, is obliged to punish with the same scrupulousness, and with the same rigour, all crimes committed against the persons and properties of foreigners living in his territories, as he would punish the same crimes if committed against the persons or properties of his own subjects. But, with respect to crimes committed out of his territories, the sovereign is not perfectly obliged to punish the criminal who seeks shelter in his dominions, nor to execute a sentence pronounced against his person or property. However, the general good seems to require that those who attack immediately the safety of the state should not go unpunished; and, accordingly, in case of requisition, no sovereign refuses *directly* * to take cognizance of such crimes. †.

* D'AVAUX, *Mémoires*, tome 5. p. 19.

† The question concerning the choice of penalties to be inflicted on criminals who have committed crimes in other countries, is amply discussed in MEISTER, *vollständige Einleitung zur peinlichen Rechtsgelahrtheit*, p. 8. § 1. c. 10. § 14.

SECT. 24.

Of the Extent of the criminal Power.

THE criminal power being confined to the territory, no act of its authority can be exercised in foreign countries, without violating their rights. Consequently, neither the pursuit of a criminal by armed men, nor a seizure or carrying away by force,* nor the conducting of a criminal by an armed force, can take place on a foreign territory, without permission from the sovereign; except, at least, some treaty has been made that authorizes it. The same principles hold good between the states of the Empire; except that, in virtue of certain laws,† the pursuit of a criminal who has broken the peace, and who escapes into another state, is permitted. The extent of this right has been the subject of much dispute in Germany. It is a right that can by no means be considered as applying

* There are instances enough of this sort of violence, but they have ever been regarded as very serious infractions of the law of nations. There are some remarkable examples of this nature in the *allgemeine Geschichte der vereinigten Niederlande*, v. 6. p. 377. In PUFFENDORFF, *res gestæ Fr. Wilhelmii*, l. 9. § 103. MOSER, *Versuch*, v. 6. p. 464, and *Hamb. Corresp.* 1783, n. 184.

† Register of the Empire, 1550. § 22, 26. It is doubtful, however, whether this right (*die Nacheille*) takes place with respect to any other crime than that of breaking the public peace. PUTTER, *institut. jur. publ.* § 470. (1787.)

plying to the states of Europe in general*, because it permits the following of a criminal with arms:

SECT. 25.

Of the Effect of a criminal Sentence.

By the same principles, a sentence which attacks the honour, rights, or property of a criminal, cannot extend beyond the limits of the territory of the sovereign who has pronounced it†. So that, he who has been declared infamous, is infamous in a foreign country in fact, but not in law‡; and the confiscation of his property cannot affect his property situated in a foreign country: to deprive him of his honour and property judicially there also, would be to punish him a second time for the same offence.

SECT. 26.

Of the Right of pardoning.

THE right of cancelling a criminal suit, or of pardoning the criminal, can be exercised by no sovereign,

* See, however, MÖSER, *Versuch*, l. 9. p. 463. And GUISTRONY *Einleitung in die peinliche Rechtsgelahrtheit*. v. 2. § 224 (1776).

† But, this may sometimes happen as a necessary consequence. He, for instance, who has been deprived of his nobility, employments, orders, &c. by the sovereign who conferred them, has no further claims, so he where he may, to the distinctions attached to them.

‡ ENGELBRECHT, *de servitutibus juris publici*, p. 96, and the following ones.

reign, out of the limits of his territory. A prince may pardon a crime committed in his own or a foreign territory; but this pardon cannot hinder a foreign sovereign from prosecuting the same person, for the same crime when he can seize him. The prince who first pardoned him has, then, no means of hindering the effects of such prosecution, but those of intercession; except in cases where the manifest innocence of the accused party authorizes coercive means.

SECT. 27.

Of the Coinage.

PUBLIC utility requires that the right of coining money should be placed in the hands of the sovereign*. He alone then can fix the title and value of it; and, if he does not abuse his authority, the subject cannot refuse to receive and make payments in the money prescribed by the sovereign. Foreigners also, whether they live in the territory or only deal with the subjects of the state, are obliged to submit themselves to the laws of the country with respect to payments, whether made or received†. A manifest detriment to their

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property

* During the seven years war, it was a subject of much dispute, whether the enemy in taking possession of a province, which he had no intention of keeping, could coin money under the stamp of the invaded country. See MOSER, *Versuch*, vol. 8. p. 46.

† Sometimes, in commercial treaties, foreigners are permitted to make use of foreign coin, even in public payments. See the treaty of commerce between Russia and England, 1776, art. 5.

property only can authorize their sovereign to interpose in their behalf, on this subject*. But, the right of coining extending no further than the territory of the state, no sovereign is obliged to admit foreign money into his dominions; and, if he admits it, he has an indisputable right to fix the value of it, without respect to that which it bore in the country where it was coined†. So also the prohibition of such or such a sort of money, in the country where it has been coined, or been current, does not prevent its passing current in a foreign country‡. On these points, which affect the property of states as well as that of individuals, the rigour of the natural law has been preserved entire. The states of the Empire, which have no right of coinage, but as they have obtained it from the Emperor as a particular privilege, &c. are obliged to observe, within their territory, relative to the title and value of their money, what is prescribed by the general laws of the Empire. In other respects, they follow, towards each other as well as towards foreign powers, the general maxims of the law of nations.

SECT.

* What happened in Sweden, after the death of Charles XII. and in France, during the minority of *Louis XV.* may serve as instances on this subject.

† *ROUSSET, recueil des mémoires, &c.* vol. 10. p. 56, and the following. *MOER, Virtuosi*, vol. 8. p. 15—45.

‡ Nothing, for instance, forbids the Germans to make use of those *Louis d'ors* of France, which that nation proscribed during the reigns of *Louis XV.* and *Louis XVI.*

SECT. 28.

Of Posts.

SINCE the fifteenth century, the institution of posts as established in France, has been adopted successively in the greatest part of the states of Europe *. For good reasons, it has, almost every where, been made one of the rights of the sovereign. The institution becomes more and more universal, and the different states manifest their desire of rendering it so, by a multiplicity of particular agreements entered into for the purpose of combining the posts on their frontiers †. A free passage for the posts, and a particular protection due to them, are generally acknowledged in time of peace; and they have even sometimes been stipulated for by treaty ‡. The sovereign ought never to touch what has been confided to the security of an establishment of which he is the guardian; except only in cases where the safety of the state renders it absolutely necessary. However, as the sovereign must be the sole judge whether such necessity exists, or not,

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* On the origin of posts, in different countries of Europe, see v. BEUST, *von Postregal*, vol. 1. p. 67. vol. 2. p. 34, and the abridgement of REICHARD, *Handbuch, für Reisende aller Stünde*. Leipzig, 1784. p. 25.

† MOSER, *kleine Schriften*, v. 4. p. 191.

‡ In the treaty of commerce between Sweden and Holland, 1675, art. 13; between Savoy and France, 1696, art. 6; between Sweden and Poland, 1705, § 9; between Great Britain and Holland, 1715, art. 4; between the Emperor and the Turks, 1718, 1739, art. 21.

it is very possible he might extend his authority too far here*; and, therefore, cyphers are made use of in state correspondencies.

The sovereign, in taking on him the institution of the posts, becomes responsible for the fidelity of those whom he employs in the service; he ought also to take particular measures to protect the posts, from the violations that others might commit; but, it does not follow from thence that he is to be accountable for what is taken from the post by violence, unless it be something at his own risk.

SECT. 29.

Of Rights relative to Religion.

THE rights of the sovereign relative to the religion of his states (*jura circa sacra*), are reduced to these three principal points; 1. to determine, for the good of the state; what religion or religions shall be exercised in it, and what degree of liberty shall be granted to each; 2. to protect the religions, the exercise of which he has permitted, and to preserve their rights; 3. to exercise a supreme inspection over every thing that concerns the church, in order to prevent and correct abuses that slide into the state under the pretext of religion. The rights of the members of a reli-

* WIQUEFORT, *le parfait ambassadeur*, v. 1. § 27. p. 409.—MOSEB, *Fernuch*, v. 4. p. 145.

religion, who have been permitted to form a church, that is to say a society, consist in determining what tends to the accomplishment of the object of the society, and to remove every thing hurtful to it. This is what forms the social right of the church (*jus sacrorum*)*, a right which was originally placed in the hands of the church of each state: no foreigner could partake of it, and much less arrogate the whole of it to himself. Nothing, however, can hinder the churches of several states from exercising this social right in common, whether in whole or in part, and then they may be considered, in this respect, as one great *equal* society. This was what was done in the particular councils, and, above all, in the œcumenical assemblies of the first ages, till the Popes succeeded in making themselves be regarded as the chiefs of this society, which, from that moment became *unequal*. All the members of the churches in the christian states, whether kings or subjects, were subjected to the Roman Pontiffs; who, not content with extending their power far beyond the bounds of the social right of the churches, laid their hands even on the temporal rights of the sovereigns.

* G. L. BOHMER, *principia juris canonici*; general part, v. 1. 2.

SECT. 30.

Continuation.

AFTER a time, however, not only a part of Europe separated itself entirely from this unequal society, giving to each of its churches their original rights (See Book 1. Chap. IV. Sect. I.), but even those states which remain to this day members of the unequal society, that yet subsists between the catholic states and the Pope, have been able to suppress, by degrees, the abuses of the usurped authority of the latter. They have endeavoured to recover what is due to the civil power of the state, and to defend, with more or less vigour, the liberty of their particular churches, the rights of their chiefs, and the rights of the general church, against the exorbitant pretensions of the Pope. So that, at present, either by concordats or other means, the authority of the Sovereign Pontif, an authority little compatible with the principles of public universal right and the independence of nations, is become much more restrained: the thunder of the Vatican no longer decides the fate of nations.

SECT.

SECT. 31.

Of the reciprocal Rights of Nations relative to Religion.

As the sovereign has a right to choose whether he will permit the exercise of a religion, which aims at establishing itself in his states, the foreign powers professing that religion, have no right to require the exercise of it for their subjects, unless it be promised them by treaty *. Simple domestic devotion cannot, however, be refused to those who are permitted to reside in a state.

No sovereign can, without a manifest violation of territorial rights, introduce his religion into a foreign state (either by forcible means or by missionaries), contrary to the will of the sovereign of such state. The persuasion that a sovereign may be in, that the religion he professes is the only true one, can have no weight here; for it never can have been the will of Providence, that the civil order of a state should be overturned, for the sake of introducing into it what we merely imagine to be the truth.

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SECT.

* For this reason, in treaties of commerce between powers of different religions, care is taken to fix the rights to be enjoyed reciprocally by the subjects of the two parties, with respect to their religion, burials, &c.

SECT. 32.

Of the Right of lending Assistance to those who are of our Religion.

IF there should arise in a state a dispute between the sovereign and his subjects concerning religion, foreign powers have no more right to interfere, than they have in disputes purely temporal ; that is to say, they ought to confine themselves to the employing of their good offices, or lending their assistance when requested by the nation ; unless, indeed, they can prove an acquired right, expressly authorizing them to take part in such disputes *. Nevertheless, the powers of Europe look upon themselves as having a more general right to espouse the cause of the members of their religion, and even to lend them military aid. Accordingly, they have never failed to give this proof of their zeal, except when opposed to their political interests ; but these have such a preponderance in affairs of state, that we have often seen the most zealous nations, not only abandon, for a temporal object, the cause of their religion, but, either openly or secretly, join the adverse party †.

SECT.

* For instance, if in a treaty of peace, of exchange, &c. it has been settled what shall be the regulations concerning religion in the ceded provinces, as was done in the treaty of Abo between Russia and Sweden, art. 8 ; between Austria and Prussia, 1749, art. 6 ; between Poland and Prussia, 1773, art. 8 ; in the treaty of exchange between Sardinia and Geneva, 1754, art. 12, &c.

† Such is the history of almost all the wars of which religion has been the motive or the pretext. See the excellent treaty of the late M^r. STRUZE, *von den Religions-Kriegen*; in his *Nebenstunden*, v. 2. n. 7.

SECT. 33.

Of ex-territorial Rights.

BESIDES the reciprocal rights introduced among the powers of Europe, relative to their internal constitutions, many of them have established certain *ex-territorial rights* * (otherwise called *rights of partial sovereignty*), in virtue of which one power possesses a perfect authority over the territory or sovereignty of another power, in such sort that the latter is obliged to suffer, to do, or to omit, with respect to the former, that, which, were it not for an ex-territorial right, it would not be obliged to suffer, &c. and this without a reciprocal obligation on the part of the former. These ex-territorial rights, examples of which are to be found with respect to almost every right of sovereignty, do not hinder the state in which they are exercised from being free and independent, so long as they extend only to a part of the territory, or only to some accidental right of sovereignty. But, on the contrary, when a foreign sovereign enjoys one or more of the essential rights of sovereignty, over the whole extent of the dominions of another, or when these rights cannot be exercised without his permission, the state ought no longer to be considered as entirely independent, because

* ENGELBRECHT, *de servitutibus juris publici*. Helmst. 1715. Lips. 1749. 4. FELZ, *de servitutibus juris publici*, Arg. 1701. 1737. 4.

cause the sovereign of a foreign country becomes, in part, its sovereign also *.

When ex-territorial rights have been established by persons possessing a right to dispose of the property of the state, their validity cannot be disputed; nor can the state refuse the observance of them, except in cases where it is generally permitted to deviate from the stipulations of a treaty.

BOOK

* Neither the right granted to the Dutch by the Barrier Treaty, of stationing a garrison in certain fortresses in the territory of Austria, nor the promise, so often repeated by France, not to re-fortify Dunkirk, could diminish in the least the independence of Austria and France; but when the Carthaginians promised the Romans to make war no more without their consent, the sovereignty of the former was no longer entire.—Many states of the Empire have granted to others certain accidental rights of sovereignty, even over all their territory, such as the post rights, for instance; but this can never be understood as lessening the independence of such states.

BOOK IV.

OF TRANSACTIONS WITH FOREIGN NATIONS, AND THE RIGHTS RELATIVE THERETO.

CHAP. I.

OF THE LIBERTY AND SECURITY OF NATIONS.

SECT. 1.

AFTER having examined the different rights appertaining to internal government, in their relation to foreign states and their subjects, I come to the examination of those rights of nations which have for object the maintenance of the security and welfare of the state, in its relations with foreign powers.

SECT. 2.

No Nation is obliged to give an Account of its Actions.

A NATURAL consequence of the liberty and independence of nations is, that every sovereign has a right to make, in his own dominions, whatever arrangements
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he may judge proper for the internal security of the state ; whether it be to return the blow he has received, or to ward off the one that menaces him. So that, provided that he has the authority *, and provided he is not bound down by treaty †, he may build or re-build as many fortresses as he thinks proper, as well on the frontiers as in the interior of his dominions ; he may augment the number of his troops and vessels ; make treaties of alliance, of subsidy, &c. and do, in short, every thing that he thinks necessary to enable himself to support a war, without being obliged to give an account of his proceedings to any other power whatever. Yet, such extraordinary armaments seldom fail to give umbrage to the neighbouring powers, and to create suspicions, which every state ought to remove when they are unfounded. For this reason, policy has introduced the custom of requiring explanations concerning armaments of this sort, and of giving such as ought to be satisfactory, even to states less powerful ; that is to say, when such explanations can be given with sincerity, and when they have been asked for in a becoming manner. Very often a sovereign informs

* In sovereign-states, the fundamental laws ought to determine the degree of authority that the sovereign has in this respect. In Germany this authority is limited by different laws of the Empire.

† For instance, France engaged, by the treaties of 1713, 1748, and 1763, not to re-fortify Dunkirk. This condition ceased at the peace of 1763. The republic of Genoa engaged, by the treaty with France of 1685, art. 4. to disarm a part of its vessels. See DUMONT, *corps. diplom.* tome 7. p. 2. p. 86.

informs before hand, the powers in friendship with him, that he finds it necessary to take such or such measures of security. It is, in general, only when a satisfactory answer cannot be given, that a sovereign pleads that independence of nations, which dispenses with his giving any at all.

On a principle established on this custom, it is looked upon that those powers who take umbrage at the extraordinary armaments of their neighbours, should ever precede hostilities by an amicable explanation; and, indeed, this, to a certain degree, is acknowledged by the law of nature.

SECT. 3.

Of the Balance of Power.

EVERY state has a natural right to augment its power, not only by the improvement of its internal constitution and resources, but also by external aggrandizement; provided that the means employed are lawful; that is, that they do not violate the rights of another. Nevertheless, it may so happen, that the aggrandizement of a state already powerful, and the preponderance resulting from it, may, sooner or later, endanger the safety and liberty of the neighbouring states. In such case there arises a collision of rights, which authorizes the latter to oppose by alliances, and even by force of arms, so dangerous an aggrandizement,

ment, without the least regard to its lawfulness *. This right is still more essential to states which form a sort of general society, than to such as are situated at a great distance from each other ; and this is the reason why the powers of Europe † make it an essential principle in their political system, to watch over, and maintain the balance of power of Europe.

SECT. 4.

Origin of the System of the Balance of Power of Europe.

IN all ages, nations have regarded with a jealous eye the disproportionate aggrandizement of any one amongst them. We see that many enterprises were undertaken by the ancient nations, to diminish the overgrown

* LE COMTE DE HERTZBERG, *sur la véritable richesse des états, la balance du commerce, et celle du pouvoir*, Berlin, 1786.

† At least, the greatest part of the powers of Europe have loudly asserted this right, in more than one instance ; and if others have disputed it, it was only at times when it was to be exercised against themselves : and it ought to be observed, that, even in those cases, the application of the right was the object of dispute, rather than the right itself. The opinion of learned men, on the necessity, the lawfulness, and utility of this right is far from being unanimous. See LISOLA, *le bouclier de l'état et de justice*. 1677, 12. LEHMANN, *trutina Europæ*, Jena 1710. L. M. KAULE, *de trutina Europæ quæ vulgo appellatur die balance præcipua belli et pacis norma*. Gottingen, 1744, 8. *Reflexions touchant l'équilibre, see Europ. Fama*. p. 98. p. 188. D. G. STRUBE, *Prüfung der reflexions*, &c. See his *Nebenstunden*, p. 2. n. 8. V. JUSTI, *Chimäre des Gleichgewichts von Europa*, Altona, 1785, 4.

grown preponderance of some particular state * ; but they seem never to have made the maintenance of a balance of power a regular system of their policy. The greatness of the Romans, and, since the migration of the northern nations, that of Charlemagne, and, perhaps, that of Henry V. †, are convincing proofs, that it was very long before the nations of Europe saw the necessity of attending constantly to the prevention of dangers of this sort. It was not till the sixteenth century, when the immense addition to the power of the House of Austria, and to that of the King of France, roused them from their lethargy : they then began to fear that one or the other of those powers might establish an universal monarchy ; and since that time, following the example of England, the other nations of Europe have never lost sight of the system for maintaining a balance of power ‡. Some of them, however, consulting their immediate interests only, have now and then deviated from this system.

The greatest part of the states of Europe look, now-a-days, upon this right of maintaining the balance of power, as a right that belongs to them ||.

It is for politicians to determine when this balance

* C. G. HEYNE, *progr. de fœderum ad Romanorum opes incrementas initiorum eventis eorumque causis*, Gottingen, 1790, fol.

† See BUSEN, *Welthandel*, p. 41. and the following.

‡ See the history of the balance of power of Europe, SCHMAUSS, *Einleitung in die Staatswissenschaften*, P. I.

|| GUNTHER, *Völkerrecht*, vol. 1. p. 346, and the following.

is in danger *, and to point out the means of re-establishing it: the history of Europe proves how many vicissitudes it has undergone since the beginning of the sixteenth century.

SECT. 5.

Of the Balance of Power in some Parts of Europe.

THE principle treated of in the last section, may authorize the powers of a certain part of Europe to oppose the immoderate aggrandizement of any state among them. Hence the system for maintaining a balance of power among the Eastern powers of Europe, among those of the West, or those of the North †; among the states of Germany ‡, those of Italy §; among the Europeans in America ¶, &c. The same principle may be applied to commerce ¶, and more par-

* It is clear, that it is not always the extent of the acquisition that ought to determine the danger. Every thing here depends on circumstances. The annihilation of a state, which at present serves as a counterpoise, may become as dangerous to the general safety of the neighbouring states, as the immediate aggrandizement of another state.

† V. SCHMAUSS, *Einführung in die Staatswissenschaften*, vol. 2.

‡ GUNTHER, v. 1. p. 376.

§ MOSER, *Versuch*, v. p. 73. GUNTHER, vol. 1. p. 375.

¶ MOSER, *Nordamerika nach den Friedensschlüssen von 1763*, vol. 3. p. 316.

¶ V. HERTZBERG, *discours sur la richesse de l'état*.

particularly so to navigation *; but it never can be carried so far as to hinder a state, by force, from extending its commerce by lawful means, or from augmenting the number of its vessels of war; at least, while it does not abuse its power by exercising or extending an usurped empire over the seas.

SECT. 6.

Of the Liberty of concluding Treaties.

EVERY free sovereign state has a right to form with other powers whatever treaties may appear to be conducive to its interests, provided such treaties do not violate the rights of another. Foreign powers cannot force a treaty upon a free state, nor can they dispose of its rights by treaties made between themselves.

SECT 7.

Reflections on this Liberty.

THIS liberty is reciprocally acknowledged by all the powers of Europe, as far as the theory goes; but,

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* See the declaration of France, 1758. MOSER, *Beiträge*, v. 1. p. 72. *La voix libre du citoyen d'Amsterdam, ou réflexions sur les affaires présentes* (1755). V. JUSTI, *Chimäre des Gleichgewichts der Handlung und Schiffahrt*, Altona, 1759. 4.

in the practice, 1. modern history furnishes examples enough*, of a combination of powers having forced independent states to accede, against their will, to treaties made by the combination, and even of their having put such states among the contracting parties, without deigning to consult them beforehand. 2. In a view of the weaker states of Europe, we see that they are far from being able to exercise that liberty, relative to treaties, which the universal law of nations attributes to them; and that there are but too many of these little states, which, enjoying a *nominal* independence, are *really* dependent on their too powerful neighbours†. 3. Sometimes it happens that nations have themselves contracted their liberty of making treaties, by treaties they have already made with other powers‡; and the demi-sovereign states are subjected to

* The partition treaties concerning the Spanish succession, the treaty of the quadruple alliance, 1718, the peace of Aix-la-Chapelle, 1748, may serve as examples here. See MOSER, *Versuch*. vol. 8. p. 307.

† V. STECK, *von der Einschliessung einer dritten Macht in einen Tractat und von dem Beitritte eines dritten Staats zu einem geschlossenen Bündnisse*. See his *Anführungen politischer und rechtlicher Materien*, 1776. n. 8. p. 48. and the following.

‡ For instance, several princes of India, after having granted an exclusive commerce to one nation, have no longer the right of making commercial treaties with other nations. So, in renouncing the commerce of India, as Charles VI. did in 1781, relative to the Austrian Low Countries, the right of making treaties relative to such commerce is also renounced; but this is because, in a like case, making a treaty would violate the right of another.

to certain laws *, which sometimes act as restraints on their liberty of making treaties.

CHAP. II.

OF THE EQUALITY AND DIGNITY OF NATIONS.

SECT. 1.

Of Titles, Rank, and Honours, in general.

NOTWITHSTANDING the difference in power, or in forms of government, all states enjoy, according to the universal law of nations, an entire equality of rights relative to honours, and to every thing concerning them. Each nation has a negative authority over every other with respect to its honour; but no one possesses a perfect right of demanding positive marks of distinction, and still less does it possess a right of demanding a preference. The titles, and other marks of honour, that the subjects of a state give to their sovereign, produce no necessary effect on foreigners;

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* Thus the states of the Empire, although they have the right to form alliances, are obliged to forego such as would be, either directly or indirectly, detrimental to the Empire. See the provisions made, in this respect, at the peace of Westphalia, art. 8. § 2. Capit. Imper. art. 6. § 8.

nor can the circumstance of being the most powerful ever entitle a sovereign to demand the precedence.

However, 1. if we wish to have an intercourse with a nation, and to see that nation acknowledge in our sovereign the title we have given him, we cannot very well help acknowledging the title that such nation has given to its sovereign; 2. it is the same with regard to certain honours, that custom has attached to sovereignty, and to the possession of certain titles; 3. policy may induce certain states to give precedence, and other marks of distinction, to states whose power may be dangerous or useful to them; whose friendship they ought to cultivate, and whose displeasure they ought to avoid.

This is what has actually happened in Europe, and what has caused the different powers to establish a multitude of regulations, which, taken together, form what is called the *foreign ceremonial*, in opposition to the *domestic ceremonial*. This ceremonial is, in great part, founded on simple custom; so that, at most, there is no more than an imperfect obligation to observe. It extends to all the different branches of the law of nations; but it will be more in order to treat of the personal ceremonial of the Chancery, the Maritime ceremonial, that of Embassies, of War, &c. when we come to treat of the matters to which they are applicable; we shall, therefore, confine ourselves here to dignities and precedence in general*.

SECT.

* Upon the ceremonial, see LETI, *ceremoniale historico-politico*, p. I.—
VI. 8. ACOST, PARADISI, *theatro de uom nobile*, vol. 1, 2. LUNIG, *thea-*
trum

SECT. 2.

Of the Titles, Imperial and Royal.

OF all temporal dignities those of Emperor and King are, in Europe, reckoned the most eminent. The enormous power of the ancient Roman Emperors, who had many Kings among their subjects, introduced, without doubt, the notion, that the Imperial dignity was not only above that of the Royal with respect to the honour attached to it, but that it gave also a higher degree of power * and independence †. Now-a-days, it is maintained in favour of Kings, and by themselves particularly, that the Imperial dignity, *in itself*, gives

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trum ceremoniale historico-politicum. ROUSSET, *cérémonial diplomatique*, vol. 1, 2. fol. in his *suppléments au corps diplomatique*, vol. 4, 5.

* See what has already been said of the Imperial notaries, and the observations in the third note of this section.

† We see frequent examples of this deference for the Imperial dignity in the middle centuries, when the Kings who wished to be thought entirely independent of the Roman Emperor, declared their crowns to be *Imperial crowns*, and sometimes made themselves be stiled *Emperors*. See, for England, BLACKSTONE'S *Commentaries*, v. 1. p. 2. RYMER, *Fœdera*, vol. 7. p. 2. p. 72. 125. For Spain, see ARTHUR DUKE, *de usu et auctoritate juris Romani*, p. 279. DE REAL, *science du gouvernement*, vol. 5. p. 337. For France, see *gelehrte Beiträge zu den Meklemb. Sacrin. Nachrichten*, 1753. n. 43—45. France and England still make use of the title of Emperor, in their treaties with the Turks and other barbarous nations. See DUMONT, *corps diplomatique*, vol. 5. p. 2. p. 39. 359. vol. 6. p. 1. p. 19. vol. 7. p. 231. 397. p. 2. p. 18. 74, 75, 103, 114. MOSER, *vermischte Abhandlungen*, n. 2. and his *Versuch*, vol. 3. 28. § 33. and the following. LANGIER, *histoire de la paix de Belgrade*, vol. 1. p. 65. n. 7.

no prerogative over them. Formerly the Emperor * and the Pope † claimed the right of conferring the Royal dignity on whatever prince they thought proper, without leaving to other powers the right of refusing to acknowledge him : but, at present, neither of them is allowed to possess this prerogative ‡, nor do they ever attempt to exercise it.

Every

* It was thus, that the Emperor Henry II. erected, in 906, the duchy of Hungary into a kingdom ; that Henry IV. named, in 1086, the Duke of Wratislaw King of Bohemia ; and that Otho IV. made a King of Armenia. The Genoese offered to the Emperor, Frederic I. the sum of 4,000 marks of silver, to erect the island of Sardinia into a kingdom. See, on this subject, *Hannoversche gelehrte Anzeigen*, 1750, p. 123. LUDWIG, *de jure reges appellandi*, chap. 2. § 7. in his *opuscula*, vol. 1. p. 62. DE REAL, *science du gouvernement*, vol. 5. p. 842.

† It was thus, that Sylvester II. in rivalry with the Emperor, made a King of Hungary, in 1005 ; that Eugene raised Alphonso I. of Portugal to the Royal dignity ; that Honorius II. advanced Roger, Count of Sicily, to the title of Duke, and that the Antipope Anacletus made him King of Sicily, in 1136. It was thus, that, after Henry VIII. had taken the title of King of Ireland, without consulting the Pope, the latter, in order to preserve his pretended right, gave, of his own accord, to Mary, the right of continuing the title. See RAYNAL, vol. 21. p. 2. year 1555. DE REAL, *science du gouvernement*, vol. 5. p. 837, and the following.

‡ In vain did the Pope protest against the Royal title for Prussia, which Frederic I. had taken of his own accord ; in vain did he still maintain, that he alone could dispose of crowns. See LAMBERTY, vol. 1. p. 383. J. P. LUDWIG, *nomen pontificis de jure reges appellandi*, Halle, 1702, 4. The Popes continued, however, for several years, to refuse the title of King to the sovereign of Prussia (although Benedict XIV. sometimes gave it him), till, at last, the present Pope has made use of it in his written acts. See V. HERTSBERG, *historische Nachrichten von dem ehemals von dem Papsten bestrittenen nunmehr aber anerkannten Preussischen Konigstitel*. *Berliner Monatsschrift*, 1786. August. n. 1, 2. 1787. MARZ, p. 299. This prerogative

Every Prince has a right to require, or obtain from his own subjects whatever title or dignity he may think proper; but foreign powers do not look upon themselves as obliged to acknowledge it, as long as they have not consented so to do *, either by treaty or custom; and even this consent is sometimes given conditionally only †.

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prerogative is no longer allowed to the Emperor; it is not true that he conferred the royal dignity on the King of Prussia. See the treaty of the crown, made in 1700, between Frederick of Prussia and the Emperor Leopold; ROUSSET, *supplém. au corp. dipl.* v. 2. p. 1. p. 461. If he disposed of the royal dignity, it would seem that the states of the Empire, as such, could not refuse to acknowledge it. See MOSER, *von den Kayserlichen Regierungsrechten*, p. 421.

* This is clearly established by the manner in which the Royal title for Prussia, and the Imperial one for Russia, have been acknowledged. Neither of them was generally acknowledged, till the powers of Europe had successively consented to them. The Royal title that the King of Prussia took in 1701, was first acknowledged before-hand by the Emperor, in the treaty of 1700; ROUSSET, *supplément*, vol. 2. p. 1. p. 461. p. 2. p. 2; by England, and the United Provinces and Switzerland, 1701. See *Allgemeine Geschichte der vereinigten Niederlande*, vol. 8. p. 236. LAMBERTY, *mémoires*, vol. 1. p. 710; by Denmark, Poland, and Portugal, 1701; by France and Spain, 1713; by Sweden, 1723. See MOSER, *Versuch*, vol. 1. p. 247. The Imperial title that the Czar PETER I. took in 1721, was acknowledged by Prussia, the United Provinces, and Sweden, in 1722; by Denmark, 1732; MOSER, *Versuch*, p. 1. p. 361; by the Porte, 1739; by Hungary, 1743; by the Emperor and the Empire, 1745, 1746. See FABER, *Europäische Staatskanzley*, vol. 92; by France, 1745; by Spain, 1759; by the Republic of Poland, 1764. See V. OTTO, *dis. de tit. Imp. Russici*, N. E. Puma, st. 98. p. 182, N. E. *Staatskanz.*, vol. 10. p. 1.

† France and Spain obliged the Empress Elizabeth to stipulate, that her title of Empress should have no influence in point of precedence; and when the present Empress refused to renew this stipulation, the two powers declared,

SECT. 3.

Of Royal Honours.

CUSTOM has attached certain prerogatives to the Imperial and Royal dignities, which taken together, are comprehended under the name of *Royal Honours*. These honours belong to all crowned heads, and they have even been communicated to some states whose sovereigns are not kings*. The right to an embassy of the first order, the right of preceding all other states, together with several distinctive ceremonies, make part of the Royal Honours. But the title of *Majesty* is not of the number; at least, it is not necessarily so. This title †, which was formerly given to the Roman Emperor only, has been taken successively by the kings, since the fifteenth century ‡. First it has been given to them

declared, that, in case of innovation, they would cease to give her the title of Imperial. See the declarations and counter-declarations in FABER, *N. E. Staatskanz*, vol. 10. p. 1. and the following.

* Thus, the Electors of the Empire, the Republic of Venice, the United Provinces, Switzerland, and the Order of Malta, enjoy Royal Honours; and many other states claim them.

† See in general F. C. DE MOSER, *von dem titel Majestät*, in his *kleine Schriften*, vol. 6. n. 2.

‡ In France the kings did not take this title, till towards the end of the fifteenth century. V. HENAUULT, *abrégé de l'hist. de la France*, vol. 2. p. 413. MOSER, *kleine Schriften*, vol. 7. p. 177. In Denmark, King John V. HOLLBERG, *Dän Reichshistorie*, vol. 1. p. 477. In Spain Charles I. (V.)

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them by their own subjects, then by the other kings *, then by the states of inferior dignity, and, lastly, by the Emperors who now give it to all kings †. The giving of this title is not, however, even at present, a necessary consequence of the acknowledgment of the Royal title ‡. The Turkish Emperor does not receive it from any of the crowned heads §, and the Pope receives it from none at all.

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was the first that took it. In England Henry VIII. LETI, *cérémon. hist. pol.* vol. p. 483. In Portugal Sebastian, 1578. See HENNAULT, *abrégé*, vol. 2. p. 560.

* France and England have given it to each other since 1520. Sweden and Denmark, 1685. V. PUFFENDORFF, *res gestæ Caroli Gustavi*, l. 5. § 25. p. 293. France did not give this title to Denmark till the eighteenth century.

† The Emperor refused this title for a long time, even to France. See the disputes on this subject at the peace of Westphalia, in the *mémoires et négociations secrètes de la cour de France pour la paix de Munster*, et, en abrégé, chez WIGUEFORT, *le parfait Ambassadeur*, p. 784. 1690. Since that time there have been a great many disputes between the Emperor and the Kings. See PUFFENDORFF, *de reb. gestis Fr. Wilh.* l. 10. § 17. The Emperor gave the title of Majesty to the King of Prussia by the famous treaty of 1700; to Denmark, 1702; and since Charles VI. he has given it to all Kings. See PUTTER, *juristische Praxis*, p. 2. p. 117.

‡ France, after having given the title of King to Prussia, in 1718, gave him the title of Majesty by a separate article, at the peace of Utrecht. V. DU MONT, vol. 8. p. 358.

§ ROUSSET, *supplément*, vol. 5. p. 742.

SECT. 4.

Of Precedence.

PRECEDENCE is yet looked upon as a point of much moment*. By precedence or rank, is meant the right of occupying the place of honour, when several powers assemble, either personally, by themselves or their representatives, or when their names or titles meet in the body and signature of public acts. There is little difficulty in determining which is the place of honour, custom has long ago done that†; the difficulty is to determine to whom it belongs. This is what several of the Popes, particularly Julius II.‡ endeavoured to do at the general councils, but in vain. All powers have put in their claim to it, pleading the antiquity of their independence§, the antiquity of the reigning family, their prior profession of christianity, their power, their form of government, the number of their crowns, their dignities, titles, &c. It is admitted now-a-days that neither of these, alone, can give a title to the precedence; where treaties are silent,

* ZWANZIO, *theatrum praeidentiae*. ROUSSET, *sur le rang et la pré-
sance entre les souverains*. Amst. 1746. 4.

† GOTHOFREDUS, *de jure praeidentiae*, p. 154. AGOST PARADISI, *theatro del uom nobile*. vol. 1. cap. 4, 5.

‡ PAULO SARPI, *hist. del. Consiglio Tridentino*. GUNTHER, v. 1. p. 219.

§ MOSEL, *Beiträge*, v. 1. p. 45.

silent, all depends upon possession, and that itself is often disputed. There are some few points, however, which are generally fixed and acknowledged *.

SECT. 5.

Of Precedence among crowned Heads.

ALL the Catholic powers yield, in point of precedence, to the Pope †, as Vicar of Jesus Christ, and Successor of St. Peter; but the Protestant powers consider him as Bishop of Rome only, and as a sovereign prince in Italy, and consequently such of them as enjoy royal honours refuse him the precedence. The Emperor of Germany takes, from long established custom, the lead of all ‡ the other monarchs of Europe, except the Turkish Emperor, who pretends to a perfect equality with him. This the Emperor of Germany has, acknowledged by treaty §; but the other crowned heads

* GUNTHER, *Völkerrecht*, v. 1. p. 201. and the following ones.

† Even the Emperor yields it to him in form. See ROUSSET, *mémoire sur le rang*. chap. 1. See what happened at Vienna, 1782, when the Pope visited the Emperor. *Politisches Journal*, 1782. April, p. 383.

‡ See the anecdote related by GUNTHER, x. 1. p. 221. with respect to France. In general, on the rank of the Emperor, the reader may turn to HUMLER, *von dem allerhöchsten Range, Titel und Würde der Röm. Kaiser*, Frankfort. 1770. 8.

§ See the peace of Passarowitz, 1718. art. 17; that of Belgrade, 1739. art. 20, 21. MOER, *Staatsrecht*, v. p. 106 LUNIE, *théor. diplom.*, v. 2. p. 1438.

heads do not yield the precedence to the Turk as they do to the German Emperor *. The Emperors and all the Kings take the lead of Republics †, and of all other states which have not a King at their head ‡. With respect to the Kings, there are some who have pretensions to the precedence before all the rest, as following immediately the German Emperor. Such are the pretensions of the King of the Romans §, the King of France ||, the King of Spain ¶, and of late years, the Em-

* The maxim of civil right, *si vinco te vincentem vinco te*, however natural it may be, is not at all applicable to the matter of precedence; here each power follows the particular ceremony that subsists between it and such or such an individual.

† The German Empire, considered in a body, has often been placed before, and sometimes after, the Kings. See GUNTHER, v. 1. p. 209. And the other instances he produces.

‡ In virtue of this rule, a prince, as soon as he is acknowledged as a King, ought to take rank above the Republics, however ancient they may be. Accordingly the United Provinces ceded the precedence to the King of Prussia immediately after having acknowledged him as King. See JANICON, *état présent des Provinces-Unies*, tome 1. p. 103. The Republic of Venice has thought proper to dispute the precedence with Kings, but has never obtained it.

§ NETTELBADT, *Beweis das dem Römischen König der Rang vor allen auswärtigen regierenden Oberhäuptern zustehe*; see his *Erörterungen* &c. 1773. p. 87.

|| GODEFROI, *mémoires concernant la préséance des rois de France*. Paris, 1612. 4. 1618, 1653.

¶ WALDESI, *prærogativa Hispaniæ*, 1625. fol. Upon the disputes on rank between France and Spain, see SCHMAUSE, *corp. juris gentium*, v. 1. p. 760. The dispute is at present terminated by the family compact of 1761. art. 27. See DORN, *Materialien*, 4to. *Lieferung*. p. 447.

Emperor, or Empress of Russia*. However, these princes dispute this point with each other as well as with some other princes. These latter assert their entire equality with them, at least; such are the Kings of Great Britain †, Denmark, and Sweden ‡. Other princes have yielded, either by treaty or custom, the precedence to certain powers, *in all cases where a perfect equality cannot be observed* §; but, at the same time, claiming the precedence before other crowned heads ||, or, at least, a perfect equality with them.

SECT.

* On the disputes between Russia and other States, particularly France, see *Fortgesetzte neue genealog. hist. Nachrichten*, v. 13. p. 597—601. MOSER, *auswärtiges Staatsrecht*, p. 17. On the disputes which happened at Ratisbon, MOSER, *Versuch*, v. 1. p. 57. On the disputes of 1784 and the following, see *politisches Journal*, May 1784. p. 518, 541. June, p. 650, and the *Extraordinary News*, 1784. n. 58, 60. The Turkish Emperor has promised the Emperor of Russia to give him the precedence next after the Emperor of Germany; see the peace of 1774. art. 13. But he had already promised the same thing to France, in the treaties made with that power in 1604. art. 20, 27. 1673. art. 10. 1740. art. 1.

† HOWEL, *discourse concerning the precedence of Kings*. London 1664. fol.

‡ Sweden declared at the peace of Westphalia, “*that she would not yield to France in the least point in præcedentia et prærogativa*.” See ROUSSET, *mém.* chap. 7. MOSER, *Beiträge zu dem Europ. K. Recht. in Friedenszeiten*. v. 1. p. 41.

§ On such occasions, Portugal, for instance, follows France, Spain, and England; Prussia also yields the precedence to France, Spain, and England, &c. and so does Sardinia. MOSER, *Versuch*, v. 1. p. 71. *Beiträge, etc.* v. 1. p. 48. and the following. Denmark even appears to yield to France in this point. See MOSER, *Versuch*, vol. 1. p. 41.

|| Thus Denmark demands only an equality with Spain, and claims the precedence of Sweden and Poland. Sardinia yields the precedence to France,

SECT. 6.

Of the Alternation established between Powers of equal Dignity.

NOTWITHSTANDING the disputes concerning precedence, the Kings among themselves (as also the Republics among themselves, and the other states among themselves) generally * adopt what is called *the alternation* † in all public acts, and, by this mean, establish an equality. However, the alternation is refused to some Kings ‡, which has often caused great disputes.

. Kings

France, &c. and claims it of Poland. See the authors who have treated largely of precedence in Mr. D'OMPTEDA, *Litteratur.* vol. 2. § 104, and the following.

* Either in virtue of custom or treaty. Thus France and England established it as a rule, in 1456, 1551, and 1559, to yield the precedence to each other alternately. ROUSSEAU, *mémoires sur le rang*, &c. p. 66.

† For instance, in treaties between two powers, two copies are made out, and each power, in the copy it keeps, is named first. If there are many powers concerned in the treaty, the copies are multiplied. See what was done in the quadruple alliance, 1718, and at the peace of Aix-la-Chapelle, 1748. MOSER, *Beiträge*, v. 1. p. 45, and the following.

‡ Thus the King of Great-Britain refused the alternation to the King of Prussia in 1742. See *Merc. hist. et pol.* 1763. v. 1. p. 145. And thus Hungary and Sardinia had a great deal of difficulty in procuring their admission to the alternation at the peace of Aix-la-Chapelle. Portugal was not admitted to it in 1763, till after having given an assurance that the admission for that time should not be produced another time as a precedent. See MOSER, *Beiträge*, v. 1. p. 46.

Kings yield the precedence to every foreign King* who comes, as such, to visit them in their dominions. The Emperor alone refuses to do this†. In the congresses formed to treat of peace, the ambassador of the King who acts as mediator ever takes the lead of the ambassadors of the other Kings.

SECT. 7.

Of the Rank of the Electors, of the Great Republics, &c.

AFTER the Kings follow the other states which enjoy royal honours. The Electors claim rank immediately after the Kings, before the Great Republics.
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* But the Kings do not yield in this point to Electors that visit them, and still less to any other prince of inferior dignity. The Ambassador of a King, although his representative, cannot pretend to this point of personal precedence before a King, nor even before an Elector. However, the Ambassadors of the Emperor have sometimes claimed the precedence of an Elector in person; and France, in following the example, has claimed the same thing for her Ambassadors, and maintained that she has sometimes obtained it from the Ecclesiastical Electors. See *Mémoires et négociations secrètes touchant la paix de Munster*, tome 3. p. 563. 8. MOSER, *kleine Schriften*, v. 7. p. 100.—DE REAL, v. 5. p. 51. The secular Electors have never yielded in this point to the Ambassador of France, and even the reigning Princes refuse to do it.

† ROUSSET, *sur le rang et la préséance*, p. 13, and the following. MOSER, *auswärt. Staatsrecht*. p. 17. The King of Prussia, Fred. Will. I. yielded the precedence to Charles VI. See MOSER, *Hofrecht*, v. 1. p. 26.

The Emperor has promised * to grant it them in his court; and in many other courts, they take the lead of the United Provinces † and the Swiss Cantons ‡; and every where they enjoy an equality, at least, with the Republic of Venice §. Among the republics, that of Venice takes the lead of the United Provinces || and the Swiss Cantons, which latter yield the precedence to the United Provinces ¶. All these three republics claim the precedence before that of Genoa, which, in its turn, claims an equality with that of Venice, and the precedence before the Swiss Cantons. The order of Malta ** disputes the precedence with the Republic of Venice, as well as with the other republics.

There are besides an infinity of disputes between the princes and other states of Italy ††; and not only between

* See the Imperial Capitulation, since Leopold, art. 5.

† The example of 1625, in Poland, is pleaded here; and those of 1660, at Oliva; of 1670, in Denmark; of 1683, in England; of 1779, in Sweden, &c.

‡ MOSER, *auswärt Staatsrecht*, v. 3, p. 236.

§ However, the Republic of Venice positively claims the lead of the Electors. See AMELOT DE LA HOUSAYE, *hist. de Venise*, v. 1, p. 91. But the Electors allege, among others, the example of 1490 in their favour.

|| See the ordonnance of the States-General of 1633. AITZEMA, vol. 4. p. 68. 120.

¶ PRETEL, *commentarii de republ. Batava*, § 436.

** See what happened in 1749 at Vienna. MOSER, *Versuch*, vol. 1. p. 65.

†† Savoy claims the precedence of all the other Princes of Italy, Mantua, Modena and Parma not excepted. Florence disputes it with Venice. A part of these disputes are now grounded on the double quality

between themselves, but between them and the Princes of the Empire and other demi-sovereign states *. The precedence of the states of the Empire at the Diet is tolerably well settled, by treaty or possession; but out of the Diet, where the precedence observed at the Diet is not always adopted, there are innumerable contestations. The Electors dispute with each other; the ancient Princes with the Ecclesiastical Princes; the Prelates dispute with the Counts; the Imperial Cities with each other, and with the immediate Nobility, &c. †

SECT. 8.

Of the Means of avoiding Disputes concerning Precedence.

WHEN disputes, on this subject, arise, which cannot be settled by reference to some treaty, or by conforming to established custom ‡, the court at which the right of precedence is to be exercised may, it is true,

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quality of some of the Princes in question. See in general on this subject, ZWANZIG, book 1. sect. 48. 49.

* Thus the Duke of Courland claims an equality with the ancient Princes of the Empire, &c.

† See GUNTHER, v. 1. p. 254, and the following ones. MOSER, *Nachbarl. Staatsrecht*, l. 1. p. 11, and the following.

‡ Between sovereign states, custom or treaty alone can decide. With respect to the demi-sovereign states of the Empire, it is to be doubted whether the Emperor and the Aulic Council can be refused the right of deciding disputes of rank; which might be brought before them. See MOSER, *von dem kaiserlichen Regierungsrechten*, p. 13. *Nachbarl. Staatsrecht*,

favour one nation, but it cannot force the other to submit to its decision ; and therefore, in general, it prefers remaining neuter. To prevent these disputes, at least to prevent their retarding public business, and creating disagreeable animosities *, several means are made use of ; particularly, 1. to observe an equality where the right to precedence remains undecided, either by alternately taking the lead, or by observing a strict equality in every thing ; 2. to come *incognito*, or send a minister of a different rank ; 3. to be absent, in order to avoid yielding the precedence ; or to yield, and protest at the same time, or insist upon written assurances, that what is done, shall not in future serve as a precedent.

recht, p. 13. See GUNTHER, v. 1. p. 268. The Pope has no power to determine questions of this sort, if even the rank of Ecclesiastical Princes were in dispute.

* Formerly, Princes but too often had recourse to forcible means to maintain their rank. What happened at the Council of Constance, between Spain and England, and at London, 1661, between France and Spain, may serve as examples here. Now-a-days, the politeness of our manners, and the respect courts pay to each other, form a barrier to such violences. Modern history, however, furnishes some few examples.

CHAP. III.

OF COMMERCE.

SECT. 1.

Of Commerce in general.

THE commerce * carried on with foreign nations being one of the most efficacious means of augmenting the ease, the riches, and even the power of a nation, it is of the first importance to examine what are the rights of nations with respect to it. External commerce, that is, the commerce between nation and nation, has several branches. It consists in selling the superfluity, in purchasing articles of necessity, as well productions as manufactures, in buying from one nation and selling to another, or in transporting the merchandize from the seller to the buyer, to gain the freight.

* MELON, *essai sur le commerce*. HEINECCIUS, *de jure principis circa libertatem commerciorum tuendam*. Halæ, 1738. BACHOF AB ECHT, *de eo quod justum est circa commercia inter gentes*. Jenæ, 1730. BOHMER, *de jure principis libertatem commerciorum restringendi in utilitatem subditorum*. Electa juris civ. v. 3. exerc. 19. BOUCHAUD, *théorie des traités de commerce*, à Paris, 1777-8.

SECT. 2.

Of the Liberty of Commerce.

MEN being by nature obliged to assist each other reciprocally, there exists a sort of general obligation for them to carry on commerce with each other. This obligation, however, is only an imperfect one; it does not go to hinder a nation to consult its interests* in the adoption of certain conditions or restrictions†, in the commerce that it finds it convenient to carry on. Suppose even that one nation has, for a long series of years, carried on commerce with another, it is not obliged to continue so to do, if there are no treaties or agreements which require it. Still less can one nation oblige another to trade with it alone. It is permitted to promise one nation not to trade with such or such other nation; but, this case excepted, if two nations think proper to trade with each other, a third has no right whatever to hinder it. In this sense, the liberty of commerce is conformable to perfect natural right.

SECT.

* Only in cases of absolute necessity can one nation oblige another to sell to it a part of its superfluity. In time of peace, the humanity of the European powers will hardly ever reduce a nation to the necessity of exercising this right. We have seen Russia permit the exportation of grain to Sweden in a season of scarcity in that country, when such exportation to other states was forbidden.

† The establishment of customs, and other duties, are not contrary to rigorous justice. It was the English navigation act. See lower down, sect. 4.

SECT. 3.

History of Commerce.

IN the dark and barbarous ages the sovereign paid but little attention to the commerce of individuals. It is well known how trifling the external commerce of Europe was, during the first ages after the destruction of the Western Empire. The prohibitions and restrictions with which it was loaded, savoured less of commercial policy, than of hatred against foreigners*, and contempt for the mercantile profession. But the flourishing state of some commercial towns, and particularly the formidable league of the Hans Towns, and of some Republics of Italy, opened men's eyes on the solid importance of commerce. The discovery of America and the navigation to the East-Indies followed, and totally changed the face of things. From that time most of the powers of Europe began to think seriously of maritime commerce, and to consider it as one of the most effective means of augmenting their riches and their power. Some of them succeeded in acquiring possessions out of Europe; there they founded colonies almost entirely with a view of augmenting their commerce. Others took care to encourage it, at least, in their home possessions, and to procure for their subjects, by the means of laws and treaties, solid

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* *Scriver, de jure hospitii, Diss. 1. § 6. Boucquard, ibidem, c. 1. p. 14. and the following.*

advantages, which were no less solid, for the state at the same time; since their chief tendency was to leave a balance in its favour. Now-a-days, the most important rights of commercial nations, are founded upon treaty. There are, however, some points generally acknowledged, independently of all treaties.

SECT. 4.

Of the Liberty of Commerce as at present carried on.

GENERALLY speaking, the commerce in Europe is so far free, that no nation refuses positively and entirely to permit the subjects of another nation, when even there is no treaty existing between them, to trade with its possessions, in or out of Europe, or to establish themselves in its territory for that purpose. A state of war forms here a natural exception. However, as long as there is no treaty existing, every state retains its natural right, to lay on such commerce whatever restriction it pleases. A nation is, then, fully authorized; 1. to prohibit the entry or exportation of certain merchandises; 2. to institute customs, and to augment them at pleasure; 3. to prescribe the manner in which the commerce with its dominions shall be carried on*; 4. to point out the places where it shall be carried on, or to exempt from it certain parts of its domi-

* The famous *Navigation act*, passed under Cromwell, and confirmed by Charles II. contained nothing contrary to the law of nations, notwithstanding

dominions*; 5. to exercise freely its sovereign power over the foreigners living in its territories; 6. to make whatever distinctions, between the nations with whom it trades, it may find conducive to its interests.

SECT. 5.

Of the Commerce out of Europe.

BUT, with respect to the commerce out of Europe; 1. all the powers which have formed settlements abroad, have so appropriated the commerce of those possessions to themselves†, that the colonists can carry on hardly any trade with other powers. Consequently the commerce in those possessions is not free to foreign nations; they are not even permitted to land in the country, or to enter with their vessels within cannon-shot of the shore‡; except only in cases of

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withstanding it was very embarrassing to other countries. See, on this act, the reflections of Mr. BUSCH, in the *Hamb. Address-Contoir Nachrichten*. 1774. n. 35, and the following.

* Thus Denmark does not permit foreigners to trade with the islands of Terroe, with Iceland, and the parts of Groenland which are subject to it.

† Either in permitting all their subjects to partake of it, or in granting a monopoly to trading companies. See on these companies J. F. L. B. BACHOFF AB ECHT, *de eo quod justum est circa commercia inter gentes ac præcipue de origine ac justitia societatum mercatoriarum majorum*. And divers charters in MOSER, *Versuch*, v. 7.

‡ See examples of disputes on this point in Sir W. TEMPLE's Letters, particularly p. 118.

urgent necessity. But to some places, to certain islands in particular, the trade has been declared free for all nations, or for some, at least *. 3. Many nations out of Europe, particularly several Indian kings or chiefs, have made treaties with certain European powers, in virtue of which those powers enjoy an exclusive trade with them; and those kings are bound not to make any alterations towards favouring, or opening a commerce with other powers. 3. There are examples† of powers of Europe promising not to carry on commerce, or not to extend their commerce, to the East-Indies. 4. These three restrictions excepted, the commerce and navigation to the East-Indies‡ is quite as free to every nation, as is, in general, the commerce with other powers out of Europe. Thus, after the many and vain disputes of the sixteenth and seventeenth centuries, the powers of Europe acknowledge, that none has a right to oppose an independent

* MOSER, *Nordamerica nach den Friedensschlüssen von 1783*. v. 3. sect. 5, 27. p. 352.

† See what the King of Spain promised to the United Provinces by the treaty of Munster, art. 6. And the renunciation of Charles VI. after having attempted to establish an East-India Company at Ostend, Treaty of Vienna, 1731. Many writings for and against this treaty may be seen in Mr. d'OMPTEDA, *Litteratur*. v. 2. p. 600. See also what France promised to Portugal by art. 10. of the treaty of Utrecht. More examples may be seen in BOUCHAUD, *histoire des traités de commerce*, p. 202, and the following.

‡ SURLAND, *erläutertes Recht der Deutschen nach Indien zu handeln*, 1752. 4.

pendent nation's opening a * commerce with other nations of India, provided the latter are willing to admit of it. But, many of the powers out of Europe, who do not profess the christian religion, will not admit those nations of Europe, with whom they have no treaties, to trade with them upon the same footing as the christian powers of Europe trade with each other.

SECT. 6,

Of the Necessity of Treaties of Commerce.

THE mere general liberty of trade, such as it is acknowledged at present in Europe, being too vague to secure to a nation all the advantages that it is necessary it should derive from its commerce, commercial powers have been obliged to have recourse to treaties for their mutual benefit †. The number of these
treaties

* The reader may see, on this subject, the writings on the India Company, established by the King of Denmark at Altona, 1728, in the collection of ROUSSET. v. 6. p. 1.; by the King of Sweden, 1731. See ROUSSET, *recueil de mémoires*, &c. v. 6. p. 243; and particularly the declarations that the Dutch made to France, 1663. See *Lettres et négociations de JEAN DE WITT*. v. 2. p. 566. The remarkable declarations that the English and Dutch made to the King of Prussia, when the India Company was established at Embden, 1750. See MOSSA, *Versuch*, v. 7. p. 44. The writings relative to the establishment of the India Company at Trieste, 1776. in the *Mém. hist. et pol.* 1776. v. 2, p. 53. 399. and in MOSSA, *Versuch*, v. 7. p. 260. and the following.

† PIERAL, *de proximibus commerciorum*. Moscov, *de federibus commerciorum*. BOUCHAUD, *abris des traités de commerce*, Paris, 1777. 8.

treaties is considerably augmented since the sixteenth century. However they may differ in their conditions, they turn **generally** on these three points; 1. on commerce in time of peace; 2. on the measures to be pursued with respect to commerce and commercial subjects in case of a rupture between the parties; 3. on the commerce of the contracting party that may happen to remain neuter, while the other contracting party is at war with a third power.

SECT. 7.

Theory of Treaties of Commerce.

WITH respect to the first point, the custom is;
1. to settle, in general *, the privileges, that the contracting powers grant reciprocally to their subjects;
2. to enter into the particulars of the rights to be enjoyed by their subjects, who shall reside on the territory

VON STECK, *Handlungsverträge*, Halle, 1782. 8. The same, *von den Handlungsverträgen der türkischen Pforte*. In his *Versuch*, 1772. n. 16. p. 86. item *von den Handlungsverträgen der Russischen Reichs*. See his *Versuch*, 1783. n. 10. p. 61.

* Very often a clause is introduced, expressing that the other contracting party shall be treated *as the most favoured nation*. This clause was first adopted in treating with the Turks. See on the sense of this clause, *Réponse du Duc de Newcastle à Mr. Mitchel*, 1753. p. 29. and JENKINSON, *discourse on the conduct of Great-Britain*; and in the *supplement to the collection of treaties*. The clause that the subjects of the other power shall be treated like our own, appears to have been too extensive to be observed. See Mr. DE STECK, *Handelwerträge*, p. 23. and the following.

ritory of the other power ; as well with respect to their *property* (particularly in regard to imposts, *droit d'aubaine*, confiscation, sequestration, &c.) as to their *personal* rights. Particular care is usually taken to provide for the free enjoyment of their religion, for their right to the benefit of the laws of the country, for the security of the books of commerce, &c. 3. to mention specifically the kinds of merchandize which are to be admitted to be imported or exported, and the advantages to be granted relatively to customs*, tonnage, &c.

With respect to the rights and immunities in case of a rupture between the contracting parties, the great objects to be obtained are ; 1. an exemption from seizure of the person, or effects, of the subjects residing in the territory of the other contracting power ; 2. to fix the time that they shall have to remove, with their property, out of the territory ; or to point out ; 3. the conditions on which they may be permitted to remain in the enemy's country during the war †.

In specifying the rights of commerce to be enjoyed by the neutral power, it is particularly necessary, 1. to exempt its vessels from an embargo ; 2. to specify the merchandize which are to be accounted contraband of war, and to settle the penalties in case of contravention ; 3. to agree on the manner in which vessels shall
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* Besides this, a tariff is often joined to the treaty ; but the duration of this tariff is not always that of the treaty.

† See the treaty between England and France of 1766, art. 2.

be searched at sea; 4. to stipulate whether neutral bottoms are to make neutral goods, or not*, &c.

SECT. 8.

Of Consuls.

SOMETIMES nations permit, either from custom or treaty †, other nations to send consuls into their territories. We find instances of this as far back as the twelfth century, when some states began to establish, *at home*, judges whose particular function it was to decide on matters purely commercial, and to whom was given the name of *consuls* ‡. In process of time, some of the powers stipulated, in their treaties with the Mahometan and Pagan states out of Europe, for the right of sending consuls into those states §, to watch over the interests of their subjects trading there, and to judge and determine on differences arising amongst them touching commercial

* I shall speak more fully on these points in the chap. on neutrality.

† France and Holland agree expressly in their treaty of 1697, art. 39, and 1739, art. 40, not to send consuls; however, from a custom running counter to the treaties, those two powers now send them.

‡ As at Pisa, Lucca, Venice, Genoa. See MURATORI, *antiq. Ital. medii ævi*. vol. 2. diss. 30. p. 881. 37. 89. In some countries, this sort of judges are yet called *consuls*; as in France; see TOUBEAU, *institutions du droit consulaire*, v. 1, 2.—svo. ROGEE, *jurisprudence consulaire*, 2.

§ DE STECK, *observations subsidiaires*. MISLER, *bauché d'un discours sur les consuls*, 1784. 4. DE STECK, *von dem Consule handelslicher Nationen*. See *Versuch*, 1772, n. 9. p. 120, and the following *Dictionnaire des citoyens*, sous le mot *Consul*.

commercial affairs, and sometimes even others. Following these examples, the Christian powers of Europe, began, in the fifteenth century, to send consuls into each others territories; but even at this day the custom of receiving them cannot be looked upon as universally established. Besides, the rights of these consuls where they are admitted, differ very widely in different states. Almost all the consuls, who are sent out of Europe, exercise a pretty extensive jurisdiction over the subjects of their sovereign. In Europe, there are some places where the consuls exercise a civil jurisdiction more or less limited over their fellow subjects residing there; in others they can exercise no more than a *voluntary* jurisdiction*; and in others their functions† are confined to watch over the commercial interests of the state, particularly the observation of the treaties of commerce, and to assist with their advice and interposition, those of their nation, whom commercial pursuits or connexions have led to the place for which they are named. They assume their functions sometimes in virtue of credentials, but oftener by simple *letters of provision*, and letters of recommendation. Although they are under the particular protection of the law of nations, they are far from enjoying the advantages that custom allows to ministers, either as to
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* Treaty between England and Denmark, 1664, art. 15, 16, 22, 24, 25. Between Denmark and Genoa, 1756, art. 4.

† On the functions of Consuls see, *Discours Politique*, vol. 2. p. 29, and the following. FORTBONNAIS, *Recherches et considérations sur la France*, v. 1. p. 409, 410.

jurisdiction *, imposts, religion †, or honours ‡. So that, it is only in a very extensive sense of the words, that they can be called public ministers §. The greatest part of the consuls out of Europe approach much nearer to the rank of ministers; some of them are, indeed, ministers and consuls at the same time.

Sometimes consuls-general are appointed. These are to officiate for several places at the same time, or else they are placed at the head of several consuls.

In

* Generally, the Consuls in Europe are subject to the civil jurisdiction of the country where they are stationed. See BYNKERSHOEK, *traité du juge compétant des Ambassadeurs*, tome 10. § 5, 6. WIQUEFORT, *le parfait Ambassadeur*, liv. 1. § 5. See the disputes which happened at Naples, 1761. *Merc. hist. et pol.* 1764, and other examples, *Merc. hist. et pol.* 1755, tome 2. p. 273. MOSER, vol. 7. p. 848. DE REAL, vol. 5. p. 65. MR. DE VATTEL, book 2. c. 2. § 34. This author maintains that they ought to be exempted from the civil jurisdiction, but, it seems, he has not proved the necessity of it; however, in many places, they would be sent to their sovereigns to be punished. BONCHAUD, *théorie des traités de commerce*, p. 150.

† It is very rarely that Consuls are permitted to exercise their religious worship in their houses, like Ministers. This is not, however, without example, at least, if the Minister be absent for some time.

‡ The Consuls may dispute about rank among themselves, but no Consul takes the lead of a Minister, even of the third order.

§ In the disputes between France and Holland, after the revocation of the Edict of Nantz, the latter positively maintained, that their Consuls were a sort of public ministers. See D'AVAUZ, *Mémoires*, tome 5. p. 171. 210. In granting that they are under the particular protection of the law of nations, it seems, that the disputes so often agitated by the learned, on this subject, whether they are Ministers or not, consist more in the word than the thing. BYNKERSHOEK, *du juge compétant*, c. 10. § 6. WIQUEFORT, v. 1. l. 1. § 5. p. 63. DE REAL, vol. 5. p. 58, refuses them the quality of Ministers.

In other respects their functions, as well as those of their vice-consuls, differ but very little from those of simple consuls.

SECT. 9.

COMMERCE is carried on either by land or by sea. It is well known that maritime commerce is the most considerable, and, in every respect the most important. Besides, the sea itself produces very respectable branches of commerce. After having treated of commerce, then, it seems indispensably necessary to treat of navigation, and of the rights established with respect to the sea.

CHAP. IV.

OF THE RIGHTS OF NATIONS UPON THE SEAS.

SECT. 1.

Of the Difference between Property and Empire.

IN order the better to understand the rights of nations on the seas and waters in general, it is essential to distinguish property from empire. The first implies

implies a right to enjoy a thing exclusively, and even to dispose of it; the second, a right to demand obedience, respect, and honour, from those who make use of it.

SECT. 2.

Of the Foundation of Property and Dominion.

ORIGINALLY every thing, and consequently the sea, the rivers, &c. belonged to all the people in the world, in common *. No one could then call himself the sole proprietor of any thing. To claim the sole property of a thing, a person must, 1. have been able to hold it legitimately, and must have a good reason for his exclusive possession. This reason may be founded on the inutility of the thing, if its use remained in common, or on the security of the possessor's property, already lawfully acquired, which may require an exclusive possession of something, which, of itself, he would not want. 2. It must have been effectively possessed, that is to say, seized with an intention to be kept. 3. The claimant must be in a situation to maintain the possession of the thing claimed.

Empire

* Without doubt this could never exist otherwise than negatively. Such a state of things did not hinder the acquisition of a particular property. But, considering the equality in point of right, the mutual advantage of mankind forbids them to claim the exclusive property of a thing, which can remain in common, without loss or inconvenience.

Empire may be joined to property (this is the case, for instance, with respect to *domains*), but it may also be separated from it, and may extend over a thing which is the property of others, or which belongs to nobody in particular, but remains in the primitive state of possession in common. But all empire, when separated from property, supposes the consent, express or tacit, of those over whom it is to be exercised.

SECT. 3.

Rivers and Lakes.

WHEN a nation takes possession of a district, and founds its empire over it, all that is comprehended in such district belongs to the nation. The lakes, the rivers, the streams which separate the land, are, then, the property of the state, or of particular persons, and, under the empire of the sovereign. Besides, a nation may be understood as lawfully occupying the rivers on its frontiers, even to the opposite banks. But, if these banks are occupied by another nation*, and if it be impossible to determine which of the two has had the prior possession, each, in that case, having equal pretensions, it ought to be presumed that both took possession at the same moment, and, consequently, that they met in

M

the

* STRAUCHIUS, *de imperio maris*, cap. 4. § 3. BUDER, *de dominio maris Suevici*, p. 35.

the middle. Every nation, then, has a right to property and dominion as far as the middle of all the lakes and rivers that are situated on its frontiers; at least, till the contrary has been proved, or till another division has been agreed on.

SECT. 4.

Of Straits, and the Sea near Land.

WHAT has been said of lakes and rivers, holds good also with respect to straits, which are not in general wider than the great rivers * and lakes. So also all those parts of the sea which are near land, may be looked on as lawfully acquired, and maintained as the property, and under the dominion of, the nation who is master of the coast.

A custom, generally acknowledged, extends the authority of the possessor of the coast to a cannon shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominion on the seas †.

SECT.

* I mean by great rivers, such as those the middle of which may be reached by a cannon shot, fired from the shore.

† Some have had recourse to arbitrary distances. See LOCCEMIUS, *de jure maritimo*, in HEINECCI, *scriptores rei marit.* p. 921. BODINUS, *de republica*, lib. 1. cap. 10. p. 170. ed. of Paris.

SECT. 5.

Of the more distant Parts of the Sea.

A NATION may occupy, and extend its dominion, beyond the distance mentioned in the last section, either on rivers, lakes, bays, straits, or the ocean; and such dominion may, if the national security requires it, be maintained by a fleet of armed vessels. The empire of a nation on the seas, may extend as far as it has been acknowledged to extend by the consent of other nations, and beyond the boundary of its property. It remains, then, to be considered, whether or not there are such extended limits on the European seas, acknowledged to be the property, or under the dominion*, of such or such particular nation. Among the bays, straits, and gulphs there are some which are generally acknowledged to be free; there are others which are looked upon as under the dominion, and, in part, even the property of the masters of the coast; and there are others, the property and dominion of which are still in dispute.

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SECT.

* The question of dominion is the most important. Entire property is insisted on but by few nations, as extending to the limits of their maritime dominion.

SECT. 6.

Of the Parts of the Sea acknowledged as free or subject.

1. THE following are acknowledged as free: the Spanish Sea, the Aquitain Sea, the North Sea, the White Sea, the Mediterranean Sea, the Straits of Gibraltar. 2. The three Straits, between Denmark and Sweden, are under the dominion, and are looked upon as the property, of the King of Denmark; St. George's Channel, between Scotland and Ireland, is under the dominion of Great-Britain; the Straits of Sicily are under the dominion of the King of Sicily; the Gulph of Bothnia is under the dominion of the King of Sweden; the Black Sea, the Egean Sea, the Bosphorus of Thrace, the Propontis, and the Hellespont, are all under the dominion of the Turkish Emperor. 3. Other nations dispute with England *, her claim to the dominion, and in part to the property, of the four seas that surround her; particularly the British Channel and the Straits of Dover. They dispute with the Republic of Venice, her claim to the dominion

* SELDENI, *mare clausum*. *The sovereignty of the British seas, in the year 1633. proved by records*, &c. by JOHN BOROUGHES, London, 1651. 12. G. WELWOOD, *de dominio maris*, Hague, 1653. 4. C. VAN BYNKER-SHOEK, *disq. de dominio maris*, Hague, 1703. 8.

dominion over the Adriatic *, and with Genoa, her claim to the dominion over the Ligustic Sea †. More than one dispute has arisen concerning the dominion over the Baltic ‡.

SECT. 7.

Of the Ocean.

WITH respect to the vast ocean and the four great seas that compose it; 1. the enormous extent of each of these seas, and particularly that of the Indian Sea, about which the greatest disputes have arisen, renders it not only extremely difficult to occupy, but puts it absolutely out of the power of any of the states of Europe to maintain and defend the possession of it. And, even if this could be done, the want of a justificatory reason for keeping such possession would render it unlawful. Neither the right of discovery, nor the donation of the Holy Father, nor prescription, has been able to exclude other nations from that possession in common which

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ought

* J. PALATII, *lex maritima s. de dominio maris contra Græwincelsium*, Ven. 1668.

† P. B. BURGII, *de dominio republicæ Genuensis in mari Ligustico*, Rom. et Bon. 1641. 4.

‡ *Mare Balticum*. i. e. deductio utriusque regum Daniæ ne an Poloniæ predictum mare se desponsatum agnoscat 1638. 4. *Ante Mare Balticum*, 1639. 4.

ought to be preserved*. The sole dominion may exist in the theory; but it has never been acknowledged by the nations of Europe to belong to any one of them. The ocean, then, is free †; indeed, it ought to be so. After the vain pretensions and contestations of the Portuguese, on the subject, during the 16th and 17th centuries, all the powers of Europe now acknowledge the ocean and the Indian Sea ‡ to be exempt from all property and dominion ||, and to be the common possession of all nations. A nation may, however, renounce the liberty of navigating in the Indian or any other sea §.

SECT.

* On this question of the liberty of the seas, see GROTIUS, *mare liberum seu de jure quod Batavis competit ad Indica commercia*, Lugd. B. 1609, &c. JO. SOLDENI, *mare clausum seu de dominio maris*, lib. 2. Lond. 1635. Sol. in his works, vol. 2. PASTEL, *selecta cap. jur. gent. maritimi*. Lugd. B. 1786. 4.

† However, out of Europe there are some considerable parts of the four great seas which form the ocean, of which some European nations claim either the property or dominion. See MOSER, *Nordamerica*. v. 8.

‡ See the declarations mentioned above. Chap. 3. sect. 5. of this book.

|| Sometimes, however, the maritime honours are disputed. See sect. 15.

§ See the examples alledged. BOUCHAUD, p. 202.

SECT. 8.

Of the Diversity of maritime Rights.

THE effect of these rights differ greatly, accordingly as a nation either assumes all the privileges of proprietor and of sovereign, or contents itself with those arising from empire only, or with requiring only maritime honours.

SECT. 9.

Of the Effect of the Rights over Rivers and Lakes.

RIVERS and lakes * are useful for navigation or for fishing, or for other emoluments arising from their possession; and, therefore, the powers that are masters of the banks have a right to appropriate the use of them exclusively to themselves. In general, they do forbid foreigners to fish on them; but with respect to navigation, as such a prohibition would produce retaliation, and as it is contrary to the commercial liberty generally introduced in Europe,

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foreigners.

* On the lake of Constance, see BUDER, *de dominio maris Suevici vulgo lacus Bodamici*. Jenæ, 1742. 4. to which is joined a deduction, under the title: *Warum dem hochstloblichen Erzhause Oestreich von dem hochloblichen Schwab. Crayss, etc. das sogenannte und neuerlicher dinge prætendirende Dominium maris wieder in petitorio noch poquestorio eingestanden werden konnte*, 1711,

foreigners are now permitted, in time of peace, to navigate freely and without restraint*. This liberty is founded, in part, on treaties, and in some demi-sovereign states, on law †. But, in every case where it is only founded upon custom, that custom does not hinder a nation from making whatever regulations and restrictions it pleases, or from exercising over such parts of its territory all the rights of sovereign dominion.

SECT. 10.

Of the Sea near the Coast.

THE sea surrounding the coast, as well as those parts of it which are land-locked, such as the roads, little bays, gulphs, &c. as those which are situated within cannon shot of the shore (that is, within the distance of three leagues), are so entirely the property, and subject to the dominion, of the master of the coast, that, 1. he has the exclusive right to all the produce of it, whether ordinary or accidental, as far as relates to things unclaimed by any other lawful proprietor; 2. he can forbid or restrain the navigation of foreigners, in his roads, and their entry into his ports ‡. Yet, in time of peace, this

* See an exception in the peace of Munster, 1648. Art. 14. and in the treaty of 1795, between Austria and the United Provinces.

† J. P. O. art. 9. § 1. 2. the Imperial Capitulation. art. 8. § 7.

‡ There are three sorts of ports, *shut*, *open*, and *free*. See the list of free ports in Europe in MOSER, *Ferruch*, v. 7. p. 780. and the definition that

this liberty is permitted to merchant ships, and even to ships of war to a certain number; 3. he has a right to impose duties, tonnage, &c. fees of entry, of clearance, &c. and he can institute tolls for the benefit of his navigation; 4. he may require the maritime honours that custom allows to those who have dominion over any part of the seas. In short, these parts of the sea surrounding the coast, ought to be looked upon as forming a part of the territory of the sovereign who is master of the shore.

SECT. 11.

Of Shipwrecks.

THE master of the shore cannot be said to have a right to appropriate to his own use the wreck of any foreign vessel, cast away on his coast, nor the goods, &c. that, in a moment of danger, have been thrown over board. This pretended *strandright**, contrary, most cer-

that the French Minister has given of them. *Nouvelles extraordinaires*, 1784. n. 79. supplement.

* See J. SCHUBACK, diss. *de jure littoris*. Gott. 1750. which was followed by an excellent treatise on the subject, under the title: *Commentarius de jure littoris*, Hamb. 1751. fol. v. 1. The German translation was published at Hamburg, 1767. and to this has been added the second vol. 1781. which contains the justificatory pieces. See also on this subject DREYER, *specimen juris publici Labovensis circa inhumatum jus naufragii*. Since, there has appeared J. B. FORSTENI, *de bonis naufragorum*, 1776. 4. RAINUTII *de jure littoris liber singularis*, Luccæ, 1788. 8.

certainly, to the laws of nature* as well as those of humanity, was formerly exercised pretty generally, in Europe. It has been restrained from time to time, particularly since the thirteenth century†, by privileges, laws, and a number of treaties‡; so that, at present, it may be considered as generally abolished in our quarter of the globe. If there still remains some relicks of it in a few places§, it is against such places only that it is made use of by way of retaliation||.

SECT 12.

Of the Right of saving ship-wrecked Property.

THE master of the shore, in engaging to take up¶ and preserve the ship-wrecked property, that may come within his reach, or to assist vessels in danger, retains a right to demand a compensation for the expenses
he

* SCHUBACK, § 29.

† BECKERS *Luberische Geschichte*, v. 1. p. 173. 180. 202. DAHNERT, *Sammlung Pommerischer Gesetze*. l. 3. p. 14.

‡ For instance that of 1343, between Denmark and Sweden. DUMONT, t. 1. p. 2. p. 223. 1493, between England and Spain, and in a great number of treaties, in the 17th century in particular.

§ SCHUBACK, § 30.

|| For a very different reason it is still customary to seize the ill gotten property of pirates, or the property of lawful enemies. In the last case, however, nations yield sometimes, to sentiments of humanity.

¶ This is another right of the master of the shore. Foreigners have no right to meddle with it; they have been excluded from it to prevent pillage.

he may incur in so doing, and even to detain a part of the property by way of indemnification *. This right (*jus colligendi naufragium*) is every where exercised, now-a-days, before restitution is made, even to those who appear in the appointed time, and who prove themselves the lawful proprietors. The time allowed for claiming ship-wrecked property is generally a year †, counting from the day on which the proprietor is informed of the accident.

SECT. 13.

Of Straits.

THE rights exercised on the sea near the coast, are exercised also in those straits which are not wider than two cannon shots. It is for this reason that the King of Denmark, by possessing the property and dominion of the navigable part of the Sound ‡, claims there not only the maritime honours due to him as sovereign, but certain payment for the liberty of passing §. This payment is now fixed by his treaties with other nations.

* J. H. BOHMER, *de servaticio*. Halæ, 1743. 4.

† SCHUBACK, § 39. See the treaty between Denmark and Sweden, 1748. art. 24. between Denmark and Genoa, 1756. art. 33.

‡ BOUCHAUD, *théorie des traités*, p. 105.

§ VON STECK, *von Sundzoll*, in his *Versuch*, p. 39.

SECT. 14.

Of the Effects of the Rights exercised on the Sea near Shore.

WITH regard to the effects of the rights exercised on the seas adjacent to the landed territory of state ;

1. The Turkish Emperor exercises his right of proprietor and sovereign of the Black Sea, in such manner as not to permit even the entry or navigation of it to any nation whatever, unless he has granted it by treaty*.

2. Denmark wishing to extend its empire, and rights as proprietor, over the seas adjacent to Iceland and Groenland, to the space of four miles from Iceland, and fifteen miles from Groenland, claims a right of excluding foreigners from fishing and even navigating in that space. But this is disputed by many nations, and particularly by the United Provinces †, in what concerns the right of fishing.

3. Great Britain claiming the property ‡ and empire

* After many useless attempts, Russia obtained the liberty of navigating and trading on the Black Sea, by the treaty of 1774. But, since that, new disputes have arisen, which the conventions of 1779, and the treaty of 1783, have not entirely done away. See BUSCH & ERLING, *Handlungsbibl.* v. 1. St. 2. p. 186. Austria obtained the liberty of trading on the Black Sea by letters patent of Feb. 1784.

† See the hist. of these disputes in MOSER, *Versuch*, v. 7. p. 678. and in PESTEL, *sel. cap. jur. gent. maritimi*.

‡ England has claimed, more than once, the right of excluding other nations, particularly the Dutch in the 17th century, from the her-
ring

pire of certain parts of the four seas that surround her, the empire over more distant parts*, and maritime honours on all the seas, has very often had contestations with foreign nations, who, on their part, except bound by treaties†, have never yielded her any thing more than what belongs to every master of the shore.

4. The Republic of Venice claims the empire, and particularly the maritime honours, on the Adriatic; but the neighbouring states, dispute them with her; and latterly she has not been in a situation to maintain this pretended right. An annual ceremony is of little use towards it.

5. Genoa has no longer a naval force respectable enough to claim, with effect, the maritime honours which she pretends to be entitled to on the Ligustic Sea.

6. After many disputes with respect to the empire of the Baltic, and particularly with respect to the honours of the flag, some of the states, situated on its shores, have agreed to yield those honours in certain districts, and to omit them reciprocally in others ‡.

SECT.

ring fishery, to the distance of 10 miles from her shores; but at last she granted the liberty of this fishery to the Dutch by the treaty of 1677. See *allgemeine Geschichte der vereinigten Niederlande*, v. 4. p. 244. 444. v. 5. p. 124. 459. v. 6. p. 21. 95. 107. 252. and the writings mentioned §. 6. of this chap.

* England not only claims the honours of the flag in the seas that surround her, she has in some cases pointed out the distances, within which belligerent nations should be obliged to respect the neutrality of her seas. See *SELDENI, mare clausum*, cap. 22.

† As were the Dutch by the treaty of 1667.

‡ See the treaty of 1730 between Denmark and Russia, and the peace of Abo, 1748, between Russia and Sweden.

SECT. 15.

Of maritime Honours.

THE maritime honours*, about which there have been so many disputes, and which have often led to violent acts, and even to war†, consist‡, 1. in saluting with *cannon*; and on this point it is to be determined who shall salute the first, at what distance the salute shall be given, with how many guns§, and if the salute shall be returned gun for gun; 2. in saluting with the *flag*, or with the *pendant*, and here it is to be fixed on, whether it shall be furled up, lowered, or hauled quite down; 3. in saluting with the *sails*, by lowering, or hauling down the foretopsail. This last way of saluting is usually made use of by merchantmen, but vessels of war sometimes use it also.

SECT.

* See BOUCHAUD, *théorie des traités de commerce*, p. 411.

† See ENGELBRECHT, *de servitutibus juris publici*. Sect. 1. § 5. p. 42.

‡ See J. SIBRAND, *de velorum submissione*, Rostock, 1674. 4. C. VAN BYNKERSHOEK, *quando et quorum navibus præstande sit reverentia*. *QUEST. JUR. publ.* l. 2. c. 21.—MOSER, and F. C. v. MOSER, v. 9. p. 287. v. 10. p. 218. v. 12. p. 1.

§ Almost all the powers of Europe salute by the odd numbers, as 3. 5. 7. &c. Sweden only salutes by the even number.

SECT. 16.

*Of Honours due to a Nation in its own maritime
Dominions.*

ALL powers, whether monarchical or republican, may require all foreign vessels, whatever be their number or their quality, 1. to salute with cannon, and flag, as well before they enter their ports, as in passing under the cannon of their fortresses. In the latter case, the fortresses return gun for gun, or else, after the salute is finished, fire a salute adapted to the quality of the vessels, or that of the commander; 2. being on the seas under their dominions, to salute their ships of war with cannon, and even with the flag. These points are generally acknowledged. However, 1. England, and, after her example, France, will not give this mark of honour to republics*; but require the republics to salute their admirals first. 2. It is easy to perceive how the disputes on the empire or the liberty of certain parts of the seas † must, at almost every

* See the ordinances of Louis XIV. for the navy, 1698. L. S. t. 1. art. 2. 3.

† The honours Great Britain claims on her seas have been often disputed. See MOSER L. C. The United Provinces have yielded to her the highest degree of maritime honour, in the seas pointed out in the convention of 1667. art. 18. 1674. art. 4. which is confirmed by the treaty of 1763. See also PESTEL, *sel. cap. juris gentium maritimi*, § 7.

every step, create contestations concerning these honours.

SECT. 17.

Of maritime Honours on the free or neutral Seas.

ON the parts of the sea acknowledged to be free, or belonging to a third power, there is not, generally speaking, any obligation for the vessels of war saluting one another; therefore it often happens that the salute is entirely omitted. Nevertheless, 1. it is customary for a vessel that carries no more than a *pendant* (for instance, a captain's vessel) to salute a vessel carrying an admiral's flag, and, when the salute is finished, for the admiral to return him six guns less than he has received, the vice-admiral four less, and the rear-admiral two less. 2. A detached vessel salutes a squadron or a fleet *. 3. Royal vessels require republican ones to lower their flags or pendants at the same time that they salute. 4. England, and, after her example, France, require that their admirals shall always receive the first salute, from all foreign vessels whatever, as well with cannon as with the flag †.

SECT.

* Between vessels of the same rank and the same number, there is no rule, and the same disputes may arise here as with respect to precedence, unless they agree not to salute at all. After all, saluting is in general, excepting the pretensions of some powers, nothing more than a point of politeness.

† See the ordinance of Louis XIV. 1689, l. 3. tit. 1. art. 5.

SECT. 13.

Of extraordinary Salutes.

SOMETIMES the honour of the first salute with cannon is given to persons of distinction, who are aboard the foreign vessel; to a sovereign, a prince of the blood, or an ambassador. But even this point has not escaped contestation *.

SECT. 19.

Of the Salutes of Merchantmen.

MERCHANT ships, even when they are armed, are obliged to salute all vessels of war, fortresses, and posts, as well with their cannon as with their merchant flag, and their sails.

SECT. 20.

Means of preventing Disputes.

To prevent disputes on points not decided by conventions, it is agreed, sometimes, to omit the salute,

* The Republic of Genoa refused the first salute to the vessel that brought the bride of the Emperor into its port. See *Khevenhüller annales*, v. 11. p. 956.

lute, either for once*, or always†; or else, by instructions given to the commanders at sea; rigour towards friendly powers is avoided.

* For instance, see the agreement between England and Holland, 1692. See Du Mont, v. 7. p. 2. p. 310.

† See, relative to the salute in the Baltic, the treaty between Russia and Denmark of 1730. ROUSSET, *supplément au corps dipl.* v. 3. p. 285, between Russia and Sweden, the treaty of Abo, 1743. V. MOSER, *verrucht.* v. 10. p. 2. p. 491.

BOOK V.

OF THE RIGHTS AND CUSTOMS WHICH RELATE TO THE PERSONS AND FAMILIES OF SOVE- REIGNS.

SECT. 1.

General Considerations.

THE multiplied relations existing between the Christian Princes of Europe, the ties of consanguinity and friendship which unite them, and which seem to have formed them into a sort of family; the resemblance in their manners, the taste for show and magnificence which reign in their courts; all these have contributed to give rise to an infinite number of marks of politeness, friendship, and esteem, usually exchanged between sovereigns. It is certain that these customs concern rather the person of the prince and his family than the nation, nor do they produce any other obligation than that which decency imposes; they have, however, their weight sometimes, and, therefore, in treating of the law of nations, it would seem improper to omit them. They are observed in time of war, on the principle, that war affects states only, and not the persons of sovereigns, or their personal sentiments of each other.

SECT. 2.

Of Notifications.

It is customary with princes to announce to each other every important event, whether of an agreeable or disagreeable nature, that happens in their family; such as the decease of the sovereign, his consort, the princes or princesses of the blood; the accession to the throne, marriages*, pregnancies, births, victories, &c. These notifications are made either in writing, or by an ordinary or extraordinary minister. They are answered by a compliment, conveyed, between equals, in the same manner. Sometimes such notifications produce other marks of respect; for instance, a court often goes into mourning for some time after having received the notification of the decease of one of another royal family†; sometimes such notifications are followed, on the part of him who receives them, by masses for the deceased, and sometimes by public thanks-

* At the very moment when the negotiations for a peace were broken off between England and France, the King of England notified his marriage to Louis XV. who answered it by assuring the former, that he felt the most sincere joy at the event. See *Mémoires hist. des négociations de 1761*, p. 181.

† Louis XIV. went into mourning for Leopold and for Joseph I. who died in the middle of a war with him; and Charles VI. who was in war with Louis XIV. at the time the latter died, not only went into mourning, but had performed all the religious ceremonies, that are usually performed on such occasions by those to whom the deceased is related.

thanksgivings, according as the event announced is of importance.

SECT. 3.

Of the Custom of inviting Godfathers.

SOVEREIGNS, and particularly those who are allied by the ties of blood, are in the habit of inviting each other reciprocally to be godfathers for their children. In the choice of these godfathers attention is not now paid to religion*. Sovereigns being very rarely able to appear personally on these occasions, they are represented by a minister, or sometimes by a person made choice of by the father of the child. In German, and sometimes in Latin, this ceremony gives rise to the title of godfather in the letters, &c. addressed to equals, or inferiors; in French this title is never used.

SECT. 4.

Of Presents.

WE often see sovereigns make presents to each other. On this point it is necessary to distinguish, 1.

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presents

* Henry IV. was, perhaps, the first Catholic Prince that invited a Protestant Princess, Queen Elizabeth, to be godmother. At the baptism of Peter the Second, the sponsors were, a Catholic Prince, Charles VI; a Prince of the Greek Church, Peter I; a Prince of the reformed Church, George I; and a Lutheran Princess, the Duchess Dowager of Brunswick. See MÖNN, *von den Gewitterschaften grosser Herren*, in his *kleine Schriften*, vol. 1. p. 291.

presents due in virtue of a promise made in a treaty*; 2. those which, without being strictly due, are made annually†, or which cannot very well be omitted on certain occasions‡; 3. those which are absolutely arbitrary.

SECT. 5.

Of Orders.

THE greatest part of sovereign princes §, many republics||, and even a good part of the demi-sovereign princes of Germany¶, have established orders**. With these

* See the peace of Belgrade, 1739. art. 30. in general this makes a part of every treaty of peace, made with the barbarous nations out of Europe.

† The King of Denmark and the Grand Master of Malta send Hawks to the King of France, annually.—The present that some of the European powers make to the Africans are nearly of the nature of a tribute.

‡ For instance, the consecrated swaddling-cloths that the Popes send to the Catholic Queens during their pregnancy, the presents usually made by the godfathers, &c.

§ Among the crowned heads, there are only the Emperor, as such, and the King of Bohemia, who have not founded orders of this kind.

|| The Republic of Venice has instituted the orders of St. Mark and of the Golden Star. Genoa that of St. George. The United Provinces and the Swiss Cantons have instituted none.

¶ Among the ancient secular princes of Germany, there are only the Elector of Brunswick-Lunenbourg, several Saxon Princes, the Prince of Brunswick and the Duke of Mecklenbourg, who have not instituted orders. See MOSER, *versuch*, vol. 2, p. 493.

** See the catalogue of orders in RAMMELSBERG, *Beschreibung aller Ritterorden*, Berlin, 1774. *Abbildung und Beschreibung aller hohen Ritterorden*, Augsb. u. Leipz. 1772. 12. But both these works are very imperfect.

these they decorate and recompense those of their own subjects, or of the subjects of other princes, whom they choose to honour with particular marks of their favour. Even sovereign princes accept of them from each other. We often see the badges of the highest orders worn by foreign kings, princes, and electors. The laws of each order determine whether it can be united with any other order or not; if they are incompatible, it is believed to be permitted, to lay aside the least esteemed†, that is the least honourable. Any prince is permitted to institute an order of the same name of that of another prince; but the right of conferring one and the same order may give rise to disputes‡.

SECT. 6.

Of the Reception of foreign Princes.

THE ceremonial of the different courts of Europe, though varied enough in many respects, bears a strong resemblance in many others. There is, every where, much resemblance in the manner of receiving foreign

N 4

princes

† At least, this is the opinion of Mr. MOSER, *Beiträge*, v. 2. p. 549. MOSER, however, does not seem to have proved it.

‡ Thus, Spain and Austria dispute, to this day, the right of conferring the order of the Golden Fleece, and both confer it when they please. This dispute, which began at the death of Charles II. King of Spain, could not be settled either at the Congress of Cambray, or at the peace of Aix-la-Chapelle. See AYLER, *magnum magisterium ordinis aurei Velleris*, Göttingen, 1748. 4.

princes and ministers. The reception of the former naturally differs according to the relation between the prince who visits and the prince who receives him. Among the marks of friendship and distinction given to foreign princes, we may give a principal place to those of going to meet them, saluting them with military honours, leaving off mourning on account of their arrival, yielding them the precedence (among equals), giving feasts, causing public rejoicings to be made while they remain, making them presents, ordering public prayers for them, paying all their expenses, &c. The difficulties arising from the ceremony necessary to be observed on these occasions, and the enormous expenses that it brings on each party, has given rise to the custom of travelling *incognito*. In this case there is no rule at all for the honours to be rendered to a prince. Much depends upon the degree of secrecy observed on the part of him who travels, and upon arrangements, that have been made before hand with the court he is to visit.

SECT. 7.

Of the Custom of complimenting Princes on their Way.

WHEN a king or a prince only passes through the territory of another, and sometimes, even when he comes into the neighbourhood, it is customary to shew him some marks of attention, particularly to send compliments. But it is easy to perceive how much must depend here upon circumstances, and that there can
be

be no perfect obligation for the performance of these acts of politeness.*

SECT. 8.

Of the Extritoriality granted to sovereign Princes.

GENERAL custom, rather than natural right†, has rendered it a received maxim, that sovereign princes bear with them their sovereignty, wherever they go. They are, consequently, exempted from the effects of the civil and criminal jurisdiction of the foreign state where they reside. However, to enjoy this right of *extritoriality*, 1. they must not come in secret‡ (although they may come *incognito*); 2. they must be in possession of a real sovereignty, or, at least, of the right of claiming it§; 3. they must not become subject to the state,

* But Peter I. reproached the King of Sweden most bitterly, because he was not regaled, and otherwise distinguished, when he passed through Riga *incognito* with his own embassy. See the pieces on this subject, in LAMBERTY, vol. 1. p. 125. 148.

† There is a difference of opinion on this question: to wit; is the *extritoriality* of Sovereigns a natural right? PUFFENDORFF, d. d. l. n. L. 8. c. 4. n. 21. BYNKERSHOEK, *de judice competente legatorum*, c. 3. § 13. c. 9. § 10. NEUMANN, *de processu judiciario in causis principum*, § 40. STEUBE, *Rechtliche Bedenken*, v. 3. p. 47. are in the affirmative. But HELMERSHAUSEN, *de subjectione territoriali personarum imprimis illustrium*, § 26, COCCIIUS, *de legato sancto non impuni*, c. 2. § 16. 17. and *de fundata in territorio et plurium concurrente potestate*, vol. 2. § 12. are in the negative.

‡ See, on the example of Queen Christiana, when in France, *hist. de la vie de la Reine Christine en Suède, avec un véritable récit du séjour de la Reine à Rome*, &c. and also BYNKERSHOEK, l. c. § 16,

§ DE REAL, l. c. p. 165.

state, in entering, for instance, into the military service of its sovereign*. 4. If they commit a crime which militates immediately against the safety of the state, not only is it lawful to require them to depart, but, in general, it is justifiable to act against them as against an enemy of the state†.

SECT. 9.

Of the private Property of Sovereigns.

THE moveables intended for the use, or already the property of the sovereign and his family, are exempted, in virtue of a custom generally received, from the payment of all duties of entry and passage‡; provided a requisition for that purpose has been duly made. But the immoveable property they acquire, is not usually exempted from imposts. And, the property belonging to a foreign sovereign, who is not upon the spot, as well as that which belongs to his state, or his subjects, is under the jurisdiction§ of the state, and is consequently liable to seizure||. This seizure may be made not only at the suit of the state, but of the

* BYNKERSHOEK, l. c. § 16.

† LEIBNITZ, *de suprematu principum Germaniæ*, cap. 6. p. 27.

‡ See, on Holland, PESTEL, *commentarii de republ. Batava*, § 488.

§ In the beginning of this century, the United Provinces cited the King of Prussia to appear before their tribunal, touching a part of the Orange succession, and he did not hesitate to appear.

|| BYNKERSHOEK, *de iudice competente legatorum*, c. 4. § 2. 5. c. 16. § 6. See HUBER, *ad D. tit. in jus vocando*, n. 1.

the subjects also, when they demand it in the regular course of justice, however motives of policy might justify a refusal *. But should a dispute arise between two sovereigns, relative to the property of one, situated in the dominions of the other, such dispute must be terminated in the same manner as those of a public or national nature. As neither can be judge and party both at a time, any seizure must be looked upon as an act of violence, and must, of course, be judged according to the principles laid down in cases of reprisals.

* STRUBE, *rechtliche Bedenken*, vol. 3. p. 31. AITZEMA, *Saaken van Staat en Oorlogh*, c. 34. p. 76. l. 40. p. 1033. BYNKERSHOEK, l. c. § 3. and the following ones.



BOOK VI.

OF THE DIFFERENT INSTRUMENTS, OR ACTS IN WRITING, USED IN DIPLOMATIC AFFAIRS.

SECT. 1.

Connection with the preceding.

AFTER having treated of the rights, established by treaty and custom, relative to the internal and external affairs of states, we now come to those which are exercised by the different powers, in treating with each other, in order to assert, maintain and profit from their rights. Sovereign powers acknowledge no earthly tribunal as competent to decide their disputes; they can have, then, no other way of deciding them than that of negotiation, or, if that fails, of reprisals or war.

SECT. 2.

Of amicable Negotiations.

AMICABLE negotiations are opened and carried on, sometimes, by the two powers between whom the dispute has arisen, and sometimes with the assistance of a third power who has interposed its good offices
or

or its mediation, or who has been fixed on as an arbitrator. In both cases, the negotiation may be carried on *verbally* (by the sovereigns themselves or their ministers), or *in writing*. This last manner is made use of also, where negotiation is out of the question, and where the object is, to make known the rights or the will of a sovereign, or to perpetuate the remembrance of what has been stipulated for, or agreed on, between sovereigns and states.

SECT. 3.

Of the different Sorts of Writings or Acts.

HERE we ought to distinguish between the public writings, addressed to some particular person, or court, and those addressed to the public, and which are sometimes called, in a particular sense, public acts. The writings of the first sort take either the form of letters or of memorials.

SECT. 4.

Of Letters of Council.

THE letters made use of in state correspondencies, are, letters of council, letters of cabinet, or letters in the sovereign's own hand.

Letters of *council*, of ceremony in Chancery, are those in which all the points of the ceremonial are
most

most rigorously observed*. 1. They are often written in the state language of the power who writes†. 2. They begin, if written to equals or inferiors‡, with the titles of him who writes§, which are followed by those

* See LUNIC, *theatrum ceremoniale hist. politicum*, Lipz. 1720. vol. 2. ROUSSET, *supplément au corps diplomatique*, v. 4. 5. SNEEDORF, *essai d'un traité du stile des cours*, Gott. 1751. 8. revised and corrected by Mr. DE COLON DU CLOS, 1776. BECK, *versuch einer Staatspraxis*, at Vienna, 1754. 8. J. J. MOSER, *Einkleitung in die Cammley-Wissensch*, Hanau, 1750. 8. J. C. v. MOSER, *Versuch einer Staatsgrammatic*, 1749. and many treatises of the last author, which are to be found in his *smaller pieces*.

† Of the use of the Latin language between foreign nations and the Romans, see ARTHUR DUKER, *de usu et autoritate juris Romani*. l. 2. c. 1. p. 150. After the revival of letters, the Latin tongue became the universal one as to the public writings between the powers of Europe, particularly between those who spoke different languages; and many states preserve it yet as their state language; for instance; the Empire, Denmark, Great Britain, the Pope, Poland, Portugal, Sweden, and the United Provinces. These states make use of it as well in their letters of ceremony, as in those they send to other states. But France, Russia, and Turkey, have preserved the language of their country as their state language. Translations are, however, annexed to the writings they send, and Russia generally sends her letters of council in French. See F. C. DE MOSER, *von den Europäischen Hof- und Staats Sprachen nach deren Gebrauch im Reden und schreiben*, Frankfurt, 1750. 8.

‡ In the letters of ceremony which the Electors have a right to address to Kings, they do not place their own title at the head. Generally, when a power writes to one of a superior dignity, the writer begins with the titles of the power written to, and places his own titles after his signature.

§ The number of these titles depends more on taste than on the number of real possessions. Compare the title of the King of France with that of Russia. Sometimes, not contented with enumerating the titles derived

those of him who is written to, or by the vocative. For example: A.B., *by the Grace of God, King, &c. &c. &c., to the Most High and Mighty Prince, C. D., by the same Grace, King, &c. &c. &c.* * Our good Brother†, Friend, Cousin, (and aily, perhaps,) Most High,

derived from their actual possession, princes add those of the possessions, they or their predecessors formerly held, or of those to which they pretend to claim a right. Numberless have been the disputes on this score. Besides these, there are some particular titles, with which certain sovereigns have been honoured by the Pope, and which are now become indisputable. Thus, the Emperor has the title of *Semper Augustus*, or *Ever August*; the King of France, that of *Most Christian*; the King of Spain, that of *Most Catholic* (1494), the King of Great Britain, that of the *Defender of the Faith* (1521); the King of Portugal, that of the *Most Faithful* (1748); the King of Hungary, that of *Apostolic* (1758.) The Emperor and the King of Great Britain only take these titles in their own writings; the others require them from foreign states. The King of France does not permit his own subjects to give him any other title than simply that of *the King*. See the disputes on this subject between Messrs. D'AVAUX and SERVIER, during the negotiations of the peace of Munster, in the *negociations secrètes*, v. 1. p. 112. 8. See PIGANOL DE LA FORCE, v. 1. p. 92. MOSER, *vermischte*, &c. n. 2.

* Only the Emperor, the Kings, the Electors, and Princes make use of, *by the grace of God*; and it is between equals only that, *by the same Grace* is made use of, which, besides, is not very general even among equals.

† The titles of father, brother, cousin, &c. are employed as among other individuals, or they are employed simply as an effect of the ceremonial; and in that case they vary according to the relative dignity, &c. of the two courts. In this sense, *cousin, nephew, son*, indicates a sort of superiority over him who is written to; *brother* indicates equality, *uncle* and *father* respect. See MOSER, *von dem Bruder Titel* in his *opuscula acad.* p. 413. F. C. MOSER, *die Titel Vater Mutter und Sohn nach dem Hof-Weltund Gamme-Gebrauch*. See his *kleine Schriften*, v. 1. n. 4. and, *von der Grundschrift grosser Herren*, *ibid.* n. 3.

High, Most Excellent, and Most Mighty Prince, &c. 3. In the body of the letter, the writer speaks of himself in the plural number, giving to the other the title of *Majesty**, *Highness*, &c. or simple *You*; according to the relative dignity of him who writes and of him who is written to. 4. The letter closes with the salutation in form†. Then follows, separated from the body of the letter, the date, mentioning the place, the day, the month, the year, and the

* Formerly, even the Kings gave each other the title of *Highness* only; but since they have adopted that of *Majesty*, the inferior title of *Highness* is become more general. In the sixteenth century this change began to make its appearance; the princes who had before been content with *Highness*, assumed *Majesty*, and those whose highest title was *Excellence*, assumed *Highness*. Then also the princes of the blood royal began to assume *Royal Highness*. See F. C. MOSER, *von dem Titel Hoheit*, in his *kleine Schriften*, vol. 7. n. 2, which, however, has been but lately adopted by some courts. The Electors claim *Electoral Highness*, and the ancient Princes *Serene Highness*. When there is an inequality, however, those who are of a more elevated dignity, give only simple *Highness* to the Electors and ancient Princes. Kings, in the body of their letters to republics, make use of *You* simply; but the United Provinces are in possession of the title, *Your High Mightinesses*, which they have insisted on since the year 1639, and particularly in 1683. This title was acknowledged by many powers before the end of the seventeenth century; by the Emperor, in 1710. See LAMBERTY, vol. 7. p. 76. 78.; by France, 1717; by Spain, 1789. See PESTEL, *commentarii de republica Batava*, § 306. *Allgem Geschichte der vereinigten Niederlande*, vol. 8. p. 113. On the titles of Switzerland and Venice, see ROUSSET, *supplément au corps diplomatique*, tome 5. p. 811. 818.

† We pray God, Most High, Most Excellent, and Most Mighty Prince, that He will take you into His Holy Keeping.

the reign *. After which come the signature † and counter-signature. These letters are sent from the chancery of the state, in a large form, without envelop, and sealed with the great seal. The superscription contains all the titles of the sovereign to whom it is sent.

SECT. 5.

Of Letters of Cabinet.

LETTERS of Cabinet do not require so scrupulous a ceremonial as Letters of Council ; titles are often admitted in the former that are not in the latter. In general, 1. they are now written in French between sovereigns who speak different languages ; 2. the inscription is much shortened, and without titles ; 3. the writer speaks of himself in the singular number, giving the sovereign to whom he writes the title of *Majesty, Highness, &c.* or simple *You* ; 4. the stile is less grave and more complaisant ; 5. the signature is often joined to the body of the letter by a phrase, adapted to the purpose, and, between equals, by *Sir, my Brother, Your Majesty's, or Yours, &c. A. B.* 6. the letter has an envelop, which is sealed with a middling or small seal, and the form is smaller than that of the Letters of Council ; 7. the superscription is abridged.

SECT.

* Given at _____ and of Our reign, the _____

† Or after repeating—Your Majesty's good Brother, &c.—or only Your good Brother, &c.—or else only—A. B.

SECT. 6.

Of Letters in the Sovereign's own Hand.

THESE letters, which the sovereign *sometimes* writes with his own hand, have no ceremonial at all affixed to them, either with respect to title or language. The French language seems, however, to be generally adopted for this sort of letters.

SECT. 7.

Of the Use of these different Sorts of Letters.

THE choice between these different sorts of letters depends a good deal on circumstances, and even on the taste of the sovereigns, who make use of them, yet it may be observed; 1. that, in affairs of importance, and where much ceremony is requisite, and particularly between courts who are upon the reserve with each other, Letters of Council are generally made use of, whether to equals or inferiors; but those of a rank much inferior cannot make use of them in writing to crowned heads. 2. A Letter of Cabinet is not answered by a Letter of Council; and still less is a letter of the third order, whether it comes from an inferior, an equal, or a superior. Nevertheless, 3. a prince, very inferior in dignity, does not often take the liberty to open a correspondence with a superior in a letter of the third order, if it be possible for him to send him one of the second.

SECT. 8.

Of Errors with respect to the Ceremonial.

IF an error in the ceremonial, wilful or otherwise, should happen to be observed in a state letter*, the prince who receives it has different means of rendering it null, as to its effect in future. He may simply point it out; he may enter his protest against it; he may declare that he will not answer it, till the fault be rectified; he may threaten to send back the letter; in short, he may send it back. When there is reason to believe, that the error has been made by inadvertence, one of the two first means is generally made use of.

SECT. 9.

Of Memorials.

MEMORIALS are of two sorts, those of the court and those of ministers. The first a prince generally delivers to foreign ministers residing at his court, or sends to his own ministers resident at other courts.

Of this sort of memorials, are; 1. the circular notes sent to the *diplomatic body*, and which are generally signed by the Secretary of State; 2. the answers given to foreign ministers, which have sometimes the form

* F. C. MOSER, *von Ahndung schlechterer Schreiben*, Franck. 1750. 8.

form of decrees, sometimes of signatures, resolutions, notes, &c. Of the memorials sent to ministers residing at foreign courts, some are to be presented by him; these are commonly in the form of notes, and are sometimes without signature; others are intended as instructions to the minister. The dispatches, however, sent to instruct him, are much oftener in the form of letters, than in that of memorials or rescripts.

SECT. 10.

Of the Memorials of Ministers.

THE memorials drawn up by foreign ministers are of various forms. 1. Some are in the form of letters; an inscription, a subscription, and a signature. Here the minister speaks of himself in the first person, and of his court in the second person. This form is rather out of use at present. 2. In others, the minister speaks of himself in the third person, and of the court he addresses himself to in the second person. These are always dated and signed, and sometimes they have an inscription. This form seems to be the most in use at present. 3. There are others in which the minister speaks of himself, and also of the court to whom he addresses himself, in the third person, without inscription and sometimes without signature. This is what is properly called a *Note*.

SECT. 11.

Of public Acts.

PUBLIC acts, properly so called, are in the form of *letters patent*. Of this class of writings are, full powers, treaties, ratifications, guarantees, protests, passports, manifestocs, &c. The explanations of motives, and other writings of that kind, intended to justify the conduct of one court towards another, or others, have no given form at all. They are generally in the form of writings of the same kind between individuals.

BOOK VII.

OF EMBASSIES.

CHAP. I.

OF THE RIGHTS OF EMBASSY.

SECT. 1.

Connexion.

HOWEVER simple a negotiation may be, it would be very difficult, now-a-days, to bring it to a conclusion by a written correspondence between the sovereigns. A verbal communication is absolutely necessary ; and as it would be impossible for sovereigns to negotiate themselves, they must commission others, furnished with instructions and full powers, to do it in their stead. Hence the origin of embassies.

SECT. 2.

Of a Public Minister.

By *Public Minister* is commonly meant, the person whom the state has charged with its public affairs :

in a more particular sense, the person who is at the head of some department of the government; and, in a still more confined sense, the person whom the sovereign has appointed to superintend his affairs at some foreign court. This last sort of minister (ambassador in a general sense, *legatus*) is that of which we are to speak here. The sending of this sort of ministers being a necessary means of treating of state affairs, the right to send them becomes one of the natural rights of sovereignty. These ministers are now employed, not only to negotiate the affairs of the sovereign by whom they are sent (though all their rights are grounded upon their acting in that capacity), but on points of ceremony also; and, since the introduction of perpetual embassies, sometimes the principal business of such a minister is, to watch over the interests of his master, and give him an exact account of every thing that passes, and of which it imports him to be informed. Whatever difference a rigorous attention to theory might make, as to prerogatives, &c. between negotiators and other ministers, in the practice, the same prerogatives that are enjoyed by negotiators, are also enjoyed by embassies of ceremony, perpetual embassies, and embassies in ordinary*.

SECT.

* See, on embassies, MEISTER, *bibliotheca juris naturæ*, under the word *Legatus*. OMPTEDA, *Litteratur*, v. 2. p. 587.—CONRADI BRUNI, lib. 5. *de legationibus ceremoniis, imaginibus et hereticis*, Mog. 1548, fol. *Le parfait Ambassadeur*, by ANTONIO DE VERA and DE CUNIGA, Paris, 1642, 8. ABRAHAM DE WIQUEFORT, *l'ambassadeur et ses fonctions*, à la Haye, 1680, v. 1. 2. 4. à Cologne, 1690, &c. DE SARRAS DE FRANQUENAY, *le ministre*

SECT. 3.

Of the Right of sending Ministers,

THE primitive and principal object in sending embassies proves clearly, 1. that the right of sending ministers belongs to all those states, which have a right to treat with foreign powers in their own name. Consequently, all states that are entirely free (notwithstanding vassalage, protection, and tribute), as well as all the demi-sovereign states, that have the right of making war and peace, and of forming foreign alliances, have a right to send ministers to foreign courts. Hence it comes, that the states of the Empire, as well as many other demi-sovereign states, enjoy this right *. 2. In monarchies, this right may belong solely to the sovereign, or it may so happen, that the state participates in it †. This depends on the internal constitution

ministre public dans les cours étrangères, Paris, 1781, 12. UHLICH, *le droit des ambassadeurs*. PACCASSI, *inleit in die Gesandtschaftsrechte*. MOSTER, *Versuch*, v. 3, 4. *Beiträge*, 8c. v. 3, 4. *Beiträge zu dem Europäischen Gesandtschaftsrechte*, 1780, 8. C. G. AHNERT, *Lehrbegriff der Wissenschaften Erforderniss und Rechte der Gesandten*, Dresden, 1764, v. 1, and 2.—8. C. H. von ROEMER, *Versuch einer Einleitung in die rechtlichen moralischen und politischen Grundsätze über die Gesandtschaften*, Gotha 1788, 8.

* For instance, the Duke of Courland; see *droit de ligation des Ducs de Courlande*, 4. Many of the dependent towns in Switzerland; see Mr. DE VATTTEL, l. 4. § 60. The Princes of Wallachia and Moldavia, according to art. 16. of the peace of 1774, between Russia and Turkey.

† The Emperor of Germany may name ambassadors himself; but when an ambassador is to be named who is to treat of the affairs of all the Empire,

tion of each state in particular. But, 3. no subject part of a state, no person, however distinguished by his rank and dignities *, that has not a right to treat with foreign nations in his own name, has a right to send embassies. In the communications between sovereigns and their subjects, the former sends commissaries, and the latter deputies; but neither of the two have the prerogatives of ministers. The latter have them not, for want of authority in those by whom they are sent, and the former, for want of the consent of the sovereign; and, besides, neither of them stand in need of such prerogatives †. 4. A sovereign may, however, authorize other persons to exercise the rights of appointing embassies in his name; thus, the princes of the blood, governors of provinces, viceroys, generals, and even ministers ‡, send persons vested with the character, essential rights, and authority of ministers.

SECT.

Empire, all the states belonging to it participate therein. The King of Poland can send, of his own accord, ambassadors of ceremony, or to settle his own private affairs; but for all public negotiations, the minister must be sent in the name of the king and the republic. See Mr. DE BORCH's negotiation. MOSER, *Versuch*, vol. 3. p. 119.

* The Stadtholder has not, as such, a right to send ambassadors, although he might do it as a prince of the Empire.

† We may consider it as a point peculiar to the Empire, that the different states of it send ministers to the diet, and that the Emperor sends ministers to the circles and to the states.

‡ See WIQUEFORT, vol. 1. p. 3. (1690). MOSER, *Versuch*, vol. 3. p. 13. MOSER, *Religionsverfassung in Teutschland*, p. 402. DE REAL, *science du gouvernement*, tome 3. p. 96. and the following.

SECT. 4,

Continuation.

THE right of sending ministers making part of the rights of sovereignty, it returns, in case of a vacancy of the throne, into the hands of the people, or of those who are authorized to exercise the sovereign power in the *interim* *. A sovereign who abdicates his crown, loses with it his right of sending ministers; but the simple loss of possession, when involuntary, does not always carry in it the loss of right †. A Prince, by being held in captivity, or by being driven from his throne, or even from his dominions, does not, on that account, lose at once the right of sending ministers; neither does he who has usurped his throne, or power, acquire this right by his mere momentary possession. It is the justice or injustice of the cause that ought principally to decide which of the two is entitled to exercise this right. The conduct of foreign powers, on such occasions, ought to be conformable to what has been already said with respect to the acknowledgment of general sovereignty.

SECT.

* In Poland, the right of sending embassies, during the interregnum, falls to the Primate of the Republic. In the ecclesiastical states of Germany, it falls into the hands of the Chapter, during the vacancy of the Bishoprick. See the peace of Westphalia, art. 5. § 17. HENRIUS, *de spect. Imp.* § 2. § 36.

† See DORN, *Materialien*, l. 4. p. 33. and the following.

SECT. 5.

Of the Right of receiving Ministers.

THOSE, and those only, who have a right to send ministers, have a right to receive them. They may even be obliged, *imperfectly*, to receive them, or at least not to refuse them. But, except in the case of treaties, no state is under a *perfect* obligation to receive them, and still less to permit their constant residence at its court. Every sovereign may, then, dictate the conditions on which he will receive them, and fix the manner of their reception. Nevertheless, 1. a refusal to receive ministers would be attended with serious consequences; 2. once admitted, there are certain rights which are perfectly their due; 3. there are others, which are so well established by custom, that they cannot now be refused; 4. there are many rights, particularly those belonging to the ceremonial, concerning which one court differs from another; and, indeed, generally speaking, the positive rights of a foreign minister depend, in great part, on treaties, and on law *; all the rest are founded on custom.

CHAP.

* Many states have regulated by their laws some detached points relating to embassies. Examples are to be seen in *DE REAT*, v. 5. p. 60.

CHAP. II.

OF THE DIFFERENT ORDERS OF MINISTERS.

SECT 1.

Of the Origin of the different Orders.

THE universal law of nations acknowledges but one order of ministers. It considers them all as public mandatories of the state which they represent, as far as relates to the business with which they are charged, and entitled to the rights essential to that quality, and to no other rights whatever. But the modern law of nations has established several orders of public ministers, or ambassadors*, which differ essentially in whatever concerns the ceremonial.

Formerly there was but one class of public ministers, who were all called *Ambassadors*. On their private affairs sovereigns sometimes sent *Agents*; and
on

* See J. J. MASCOW, *principia juris publici*, l. 6. c. 4. § 13. 2°. HAGEDON, *discours sur les différens caractères des envoyés extraordinaires, des envoyés ordinaires ou résidents, &c.* Amst. 1786. in MOSER, *Vorrede zu dem Belgrader Friedensschluss*; and in GUTSCHMIDT, s. FERBER, *diss. de prerogativa ordinis inter legatos*, Lipz. 1755. KULPIS, *de legationibus statuum Imp.* l. 2. c. 2. § 4. p. 400.

on missions of ceremony, or of little importance, they sent *Gentlemen of Birth*; but neither of these enjoyed the rights, or were honoured with the ceremonial, due to ministers. In the fifteenth century ministers began to be received as the representatives of their sovereigns; but the disputes resulting from their rights in that capacity, and the expense, which became more considerable as the perpetual embassies grew more customary, gave rise to an order of ministers under the title of *Residents**, much inferior to ministers representing their sovereigns. These latter now took, exclusively, the title of *Ambassadors*. Residents were considered as above agents, even when the latter were charged with affairs of state. These agents were afterwards called *Chargés des Affaires*, and the title of agent sunk into disuse, except for those who were charged with the private affairs of the sovereign only, or as a mere empty title.

In time it became customary to grant to the gentlemen of birth, a certain ceremonial, which though very vague † in the beginning, sometimes came nearly to that of Ambassadors, but oftener resembled the ceremonial of Residents. The custom of the present century has raised them above Residents, and they now form a separate order, between Ambassadors and Residents, called *Envoys*. Many causes gave rise to a multi-

* HOWEL, *discourse on the precedence of Kings, whereunto is also adjoined a treatise of ambassadors*, London. 1664. p. 180. LETI, *cerem. h. fol. 1. 6.* in several places.

† See, particularly, the discourse on the different characters, &c.

multiplication of the qualities of ministers, particularly of the second and third orders. Ministers Plenipotentiary, Ministers, Ministers Resident, Residents, Ministers Chargés des Affaires*.

SECT. 2.

Of Ministers of the first Order.

BEING the representative of the sovereign forms the characteristic mark of ministers of the first order, among which are, 1. the Cardinal Legates†, the Nuncios‡ of the Pope§, Ambassadors properly so called (*Ambasciatori*, *Oratores Magni Legati* ||, *Bots-Chafter*, *Embaxadores*) the Bailo ¶ of Venice and Constantinople. The Nuncios and Ambassadors are divided into ordinary and extraordinary. This division served originally

* This dignity seems to be quite newly instituted by the King of Sweden for his Chargé des Affaires at Constantinople, 1784. See *Mercurio hist. et pol.* 1753. t. 1. p. 117. MOSER, *Versuch*, t. 4. l. 4. c. 27.

† See J. J. DE LA TORRE, *de autoritate, gradu et terminis legati a latere*, Rome, 1656. 4. G. WAGENSEIL, *de legato a latere*, Altorf, 1696. *De legatis et nunciis pontificum eorumque fatis*, Saltsburg, 1785. 8. But, now-a-days, it is very rarely that the Legates of the Pope are sent to foreign courts, for the reasons to be seen in LE BRET, v. 2. p. 317.

‡ See WEIDENFELD, *Grundliche*, &c. 1788. 4.

§ But not the simple Legates, or Vice Legates, or Governors, that the Pope sends into his states; and still less the *Legati nati*. The Cardinal Protectors, as such, are not considered as ambassadors. See WIGUESPORT, vol. 1. p. 5.

|| LUNIG, *theatrum ceremon.* v. 1. p. 746.

¶ LE BRET, *Vorlesungen*, v. 1. p. 397.

originally to distinguish perpetual Ambassadors, from such as were sent on some particular business; but, at present, there are perpetual Ambassadors, who are also vested with the more distinguished * character of extraordinary †. With respect to precedence, 1. the character of representative, which is common to them all, raises all the ministers of the first order above those of an inferior order, without respect to the rank or dignity of the states they are sent from. 2. Among the ministers of the first order, the Cardinal Legates and the Nuncios of the Pope take the lead of all the Ambassadors of Catholic states; but those of Protestant states ‡ do not yield to them in this point. 3. The extraordinary Ambassador takes the lead of the Ambassador in ordinary §, when they are both from the same state; but, 4. among Ambassadors of different courts, no regard is paid to this distinction; they all claim a right to precedence, or yield it to others, as it is claimed or yielded by their sovereigns.

SECT.

* LUNIO, *theatrum ceremon.* v. 1. 368.

† MOSER, *Vorrede zu dem Belgrader Friedensschluss*, p. 16. note 1. id. *Beiträge zu dem Europ. Völkerrecht.* vol. 3. p. 21.

‡ *Wahl und Crönungsdiarium Carl. VI.* p. 77.

§ This, however, depends on the pleasure of the sovereign who sends them; and we have often seen the precedence taken by him, who was of the most noble birth, or of the longest standing in service, &c.

SECT. 3.

Of the Ministers of the second Order.

MINISTERS of the inferior orders are not looked upon as the representatives of their sovereign*. They do represent him, however, with respect to the affairs they are sent to transact in his name; and even with regard to precedence among themselves; so that they ought to be looked upon as representatives in an inferior degree. Again, though the manner of representation is the same among ministers of the inferior orders, yet, the degree of dignity with which they are vested by their sovereign, and the honours by which they are commonly distinguished, has given rise to the division of them into ministers of the *second* and *third* order.

Among ministers of the second order are, the Envoys† (*Inviati, Ablegati*), the ministers plenipotentiary‡, (*gevollmächtigter Minister§*), the Inter Nuncios

* MOSER, *Verrede*, &c. p. 20.

† There are no envoys stiled, envoys *in ordinary*; this would seem inapplicable to the origin of these ministers. A distinction is, however, made between the envoy, and the envoy extraordinary; and between the envoy extraordinary and the plenipotentiary. But these distinctions have no influence with regard to precedence.

‡ On the singular distinction made at Bonn, between the plenipotentiary and the *gevollmächtigter minister*, see *Pol. Journal*, 1787. p. 447. This distinction has never been adopted any where else, that I know of.

§ It is not yet fifty years since the ministers plenipotentiary began

cios of the Pope and the Emperor. With respect to precedence, there is no distinction made between the Envoys and Plenipotentiaries. Every one claims what is due to him according to the rank of his sovereign.

SECT. 4.

Of Ministers of the third Order.

THE third order of ministers is composed of Ministers Resident *, Residents, and Ministers Chargés des Affaires. Now-a-days, the ceremonial, almost everywhere, of ministers of the third order, differs greatly from that of ministers of the second order. The former yield to the latter in points of precedence †, claiming among themselves the rank that is due to them according to the dignity, &c. of their sovereigns.

It

to be looked upon as ministers of the second order. See what happened in France in 1738, and at Vienna in 1740. DE REAL, t. 5. p. 48. MOSER, *Beiträge*, v. 3. p. 28.

* Many courts make no distinction between the ministers resident, and the residents.

† In the seventeenth century, the King of France declared "that he did not wish his Envoy Extraordinary, who was then at Vienna, to be otherwise considered than as a Resident in ordinary." See *Dis. sur le rang*, § 7. MOSER, *verrede*, &c. p. 41. Yet France and the Imperial Court seem to have been the first who contributed to the raising of the envoys above the residents, and particularly since the beginning of the eighteenth century. The Republic of Venice, which has never adopted the distinction between the ministers of the second and third order, requires for its Residents the honour due to ministers of the second order, and does not suffer them to yield the precedence to envoys as such.

It seems, that we ought to reckon among the ministers of the third order, the simple *Chargés des Affaires*, as well those who are appointed *per interim* as those who are permanent. They have not, however, the title of ministers, and are generally introduced and admitted* through a verbal presentation of the minister, at his departure, or through letters of credence addressed to the minister of state of the court to which they are sent. The ceremonial observed towards them is very arbitrary. They have the essential rights of ministers, and do not yield the precedence to ministers, residents, &c. if their court does not yield in this point.

SECT. 3.

Of Agents, &c.

AGENTS of private affairs †, agents resident, counsellors of legation ‡, and titular agents, are all
 P 2 excluded

* There are but very few examples of *Chargés des Affaires*, who have been acknowledged in consequence of credentials addressed directly to the state.

† The agents carry with them no credentials but letters of recommendation. WILDVOGEL, *de testamento legati*. § 3. c. 2. § 1. *Mémoires d'ESTRADES*, t. 2. p. 457.

‡ Unless the Counsellors of Legation, *Principaux Conseillers de Legation*, &c. are *Chargés des Affaires*, or Secretaries of Legation at the same time. In this last quality they claim the rights of embassy.

excluded from the rank, title, and privileges of ministers*.

SECT. 6.

Of Deputies.

SOMETIMES the minister sent by a body, or association, of states (such, for instance, as that of the United Provinces, or the Swiss Cantons), as also those sent by the different courts to congresses, are called *deputies*. This name neither adds to, nor takes from, the quality of minister, with which they may be vested at the same time, neither does it, of itself, designate a particular order of ministers. There are ambassadors and other ministers, who are at the same time deputies, and there are also simple deputies†; but these last cannot claim the rights of embassy, because they are not vested with the character of ministers. Of this last class are those whom subjects send to their sovereign. Some ministers are called commissaries (which sometimes happens when they are sent to make limited treaties), and they have during their functions, a right

* If, sometimes, in little states they may be indulged with immunities of jurisdiction or of imposts, we ought not on that account, to look upon such immunities as their due.

† Many towns in Italy and Spain have a right to send deputies to their own sovereigns, in which deputies they give the title of ambassadors, but they have the title only; they can claim none of the rights of embassy. See De Saade, l. 4. p. 61.

a right to exercise the prerogatives of ministers. But properly and strictly speaking, those only are called commissaries whom the sovereign sends to treat with his subjects.

SECT. 7.

Of the Right of sending Ministers.

THE right of sending ministers may be possessed in part. Either a state may have a right to send ministers of all the orders, or of some only. All the crowned heads, the Republic of Venice, the United Provinces, the Swiss Cantons*, and (to some courts) Genoa and the Order of Malta †, possess the right of sending ministers of the first order. The states of the Empire have prevailed on the Emperor ‡ to grant them the right of an embassy of the first order, and,

P 3

28

* The Swiss, however, have not been able to obtain from the court of France, the same treatment as custom grants to the ambassadors of the other Great Republics. The Swiss rarely send one or two ministers in ordinary as they did to Vienna, 1700. See *Etat et Officiers de la Suisse*, v. 1. chap. 18. Generally the Cantons name each its own deputy, which have, at most, the rank of ministers of the second order. See *De Reat*, vol. 5. p. 40.

† The Order of Malta obtained the rank, &c. of ambassador for its minister at Rome, 1747; at Vienna, 1749. *Moritz, verzeich*, vol. 8. p. 5. The declarations made by the Republic at Venice on this occasion is in the *Mém. de l'Etat*, 1749. v. 1. p. 873.

‡ *Supplément aux Mém. de l'Etat*, tom. 28. § 2.

as far as relates to their ministers sent to the Diet, it is granted them by all the foreign states. They demand it from all the Courts of Europe, in alleging many acts of possession in their favour*, and, after their example, the German Princes demand the same; but neither have been able, as yet, to obtain it. They, as well as the other sovereign† and demi-sovereign states‡, send ministers of the second and third order. Ministers of the first are seldom sent to courts from whence ministers of the same order are not received.

SECT. 8.

Of the Choice between the different Orders.

A POWER, possessing the right of embassy in its full extent, has a right to choose with respect to the order and number § of the ministers it sends. However,

* What happened at Vienna, 1765. MOSER, *außwärtiges Staatsrecht*, p. 239. item *Zusatz zu seinem neuen Staatsrecht*, v. 1. p. 102. and 1781. is without doubt in favour of the Electors: though each of these examples show, that many of the powers avoided granting formerly the same treatment to their ministers as other ambassadors.

† On the right of embassy of the Counts, see MOSER, *Beiträge*, vol. 2. p. 10. On that of the Imperial cities, J. U. CRAMER, *de pari jure civitatum Imperialium ac gentium liberarum in recipiendis legatis*, Marb. 1746. 4.

‡ Some of the Princes in Italy, it is true, have latterly sent and received ministers of the first order (See Moser); but it seems, they owe this rather to their being considered as Royal Princes, than to their sovereignty.

§ Sometimes several ministers of different orders are sent to the same court. See *Lettres, Mémoires, et Négociations du Chevalier d'Éon*, p. 101, (B.)

ever, 1. it may be looked upon as an established custom, to send ministers of the same order and in the same number as those received. 2. There are some embassies of ceremony that are not received but in the order and number established by a particular custom*. 3. Sometimes it has been insisted on as a right, to send several ambassadors to courts from whom more than one had not been refused†. On the contrary, it often happens, particularly in Germany, that one minister has letters of credence to several courts at once.

P 4

SECT.

* The Republic of Venice congratulates the Emperor, the Kings of France and of Great Britain, on their accession to the throne, by an embassy of two ministers of the first order. The King of Sardinia not being able to obtain (1774) the same, refused to receive any congratulation at all. See MOSER, *versuch*, vol. 3. p. 71. The United Provinces congratulate the King of Great Britain (and other kings) by an embassy of three ministers.

† The Emperor grants to the Electors, in virtue of the *Capit. Imp.* art. 3. § 20, the right of sending several ambassadors at a time; but at the peace of Nimègue (WIQUEFORT, l. 1. § 26), and at the diet of election, in 1742. some powers, and France in particular, attempted, but in vain, to dispute it. MOSER, *versuch*. v. 3. p. 106.

SECT. 9.

Of Choice in the Person of the Minister.

THE choice of the person* to be sent as minister, depends, of right†, on the sovereign who sends him; leaving the right, however, of him to whom he is sent, of refusing to acknowledge any one, to whom he has a personal dislike‡, or who is inadmissible, by the laws and usages of the country §.

CHAP.

* BYNKERSHOEK, l. 1. c. 5. *Qui recte legati mittuntur*. Birth (*Let. mém. et nig. du Chev. d'Eon*, p. 65), post, religion, and even sex, form no reason for exclusion. The wife of Marshall Geuebriant was ambassadress in form. This is, however, the only example of the sort. The Countess of Koenigsmark, sent to Sweden by Augustus King of Poland, was not really an ambassadress, though she was charged with affairs of state. F. C. MOSER, *die Gesandtin nach ihren Rechten und Pflichten*; in his *kleine Schriften*, vol. 3. n. 2.

† But the Nuncios of the Pope, sent to the Emperor, to France and to Spain, as well as to many other Catholic courts, are chosen by the courts to whom they are sent. The Pope has, but in vain, endeavoured to restrain this usage. See HABERLIN, *Rom. Conclave*, p. 23.

‡ See, however, the *mémoires d'ESTRADES*, v. 1. p. 237, 268. If the minister is sent to a prince, not as such, but as the chief of a body of states, the prince has less liberty to refuse him, on account of any personal dislike. See an example in MOSER, *Zusatz*, v. 3. p. 1192, and SCHOLOTZER, *Staatsanzeigen*, b. 4. p. 458.

§ It seems that France has hardly ever consented to receive one of her subjects as minister from a foreign court; and yet the case under Charles VII. See MOSER, *Versuch*, v. 3. p. 89. The United Provinces resolved, by an ordinance of the States General of 1727, never to receive, as minister from a foreign court, any person born in their territory, or by his residence, subject to their laws; excepting only the sons of foreign ministers. PESTEL, *commentarii de republ. Batava*, p. 491.

CHAP. III.

OF THE FORMALITIES NECESSARY TO A MINISTER'S BEING RECEIVED AT A FOREIGN COURT.

SECT. 1.

Of the Retinue of a Minister.

THE next point to be considered is, what relates to the retinue of the minister, and to his being acknowledged in his diplomatic capacity. The military procession accompanying ministers formerly is fallen into total disuse, except in the great embassies, that the Turks send to some European powers, and those they receive in return. The retinue of a minister varies according to his order. In that of an ambassador there are very often several gentlemen and pages, a number of secretaries, clerks (sometimes a chancellor at their head) one or more interpreters, a numerous train of servants in and out of livery, &c. With respect to his moveables, plate of all sorts, and in abundance, and several coaches and sets of horses, seem absolutely necessary. However, it is well known how much all this depends upon circumstances. The retinue of ministers of the second and third order is much less: the
envoys

envoys have rarely any gentlemen, and not often more than one secretary *. The heavy expenses attending embassies of the first order, and which must be defrayed either by the court who sends the ambassador †, or by the ambassador himself, have much contributed towards the disuse of perpetual embassies of the first order ‡. Some courts, for different reasons, never send any at all of the first order.

SECT. 2.

Of Letters of Credence.

BEFORE a minister can expect to be acknowledged at a foreign court, he must produce a letter of credence §, written by the sovereign ¶ who sends him, to the

* The Russian Envoys have commonly two.

† F. C. MOSER, *Von dem Appointment oder Gehelt eines Gesanten*, in his *kleine Schriften*, v. 1. p. 182. See also LE BREY, *Magazin*, v. 2. p. 206.

‡ There are, in times of peace, about thirty-seven perpetual ambassadors in Europe, eleven of whom are sent by France. There are, besides, about eleven Nuncios of the Pope.

§ J. G. ESTOR, *de jure poſcendi litteras quas vocant credentiales a legatis*, Jenæ, 1748, 5. J. F. JUOLER, *de litteris legatorum credentialibus*, Lips. 1741, 4.

¶ The constitution of each state determines, whether the prince alone is to sign the letter, or whether any other branch of the government is to participate in it. The letters of credence produced by the ministers sent from Poland, are obliged to be signed by the King by the authority of the Republic. See the affair of Mr. de BORCH, in Russia. MOSER, *Versuch*, vol. 3. p. 119.

the sovereign who is to receive him. This letter makes mention of the motive of the mission, the name and quality of the bearer; and prays the person to whom it is addressed to give full credit to what he shall say on the part of his court. The form * of these letters varies according to circumstances, but commonly they are in the form of letters of council. One letter of credence may serve for two ministers sent at the same time, if they are both of the same order. Sometimes, on the contrary, one minister has several letters of credence †; this happens when he is sent to several sovereigns, or to one sovereign in different qualities.

SECT. 3.

Of Letters of Recommendation.

LETTERS of credence must not be confounded with simple letters of recommendation ‡, which are some,

* DE NETTEBLADT, *de forma litterarum credentialem*. SNEEDORFF, l. c. *speciale*, c. 1. art. 1.

† Some courts give several copies of the same letter of credence to their ministers of the first and second order, one of which is delivered to the minister of state, before the original is presented at the audience, BECK, *Staatpraxis*; l. 5. chap. 1. p. 240. This case ought not to be confounded with the one we are now speaking of. The ministers sent to Switzerland are often charged with more than four different letters of credence. So it is with those sent to the Emperor, to the circles, &c.

‡ Sometimes, however, letters of recommendation come very near to those of credence; and those that foreign ministers, sent to the United Provinces, carry to the Stadtholder, seem rather letters of credence than simple letters of recommendation.

sometimes given to the minister, to recommend him to some prince or princess of the family of the sovereign to whom he is sent. Sometimes such letters are addressed to one of the principal ministers of state *, or to the chief magistrate of the place † where he is to reside.

SECT. 4.

Of Full-Powers.

MINISTERS to whom a négociation is confided, must also produce their full-powers, specifying the degree of authority with which they are vested ‡. These full-powers are either general || or special, as circumstances

* All the ministers sent into Turkey carry such letters to the Grand Visir, before they are admitted to the audience.

† The ministers sent to the Circles of the Empire, very often carry no other letters than those of recommendation to the chief magistrate of the Imperial City where they are to reside. Sometimes they carry letters of credence to such magistrates. See ICKSTAD, *de legatorum in civitatibus immediatis ac liberis residentium privilegiis ac juribus*, 1740, 4. and in his *opuscule*, v. 2. p. 501.

‡ The state with which they are to treat, must know if they come to hear its proposals, in order to give an account of them ; or to negotiate, or conclude ; if they can name substitutes, or, if there be several, if they can act separately, or only conjointly, &c.

|| Full-powers are general, if they contain either a general authority to treat with one power, or an authority to treat with several powers : these last are called *ad omnes populos*. They are rare ; see LAMBERTY, t. 2. p. 748. v. 9. p. 652.

stances may require. A full-power * may be enclosed in the letter of credence; but if it be separated from it, it is commonly drawn up in form of a letter patent, Ministers sent to a congress, without being furnished with letters of credence to any court, produce only their full powers, which they exchange with each other, and which answer the purpose of letters of credence. Sometimes the full powers, produced at a congress, are put into the hands of the mediators.

SECT. 5.

Of Instructions.

THE minister who is to carry on a negotiation is furnished with instructions †; these are to be his guide in his general conduct towards the court to which he is sent, and towards the ministers of other courts whom he may find there, and particularly in the manner of opening and conducting his negotiation. These instructions, as well as those that it may be necessary to dispatch to him in the course of his embassy, being intended for himself alone, are not usually produced to the court where he is sent, unless his own court orders him to do it, or unless he, from urgent motives, thinks himself

* *Supplément, ou de Colon, sup.* P. special. c. 1. art. 1. p. 167.

† *PYTHAG.* *Juristische Praxis*, v. 1. p. 222. See forms of these instructions in *WALSHAM*, v. 1. p. 220, and in many parts of *D'ARTAGUES*, *mémoires*, &c.

himself justifiable in communicating certain passages of them *. Sometimes he has two sets of instructions, the one public, and the other secret.

The minister must have the key to the cypher of his court.

CHAP. IV.

OF CEREMONY WITH RESPECT TO MINISTERS.

SECT. 1.

Of the Audience of Ambassadors.

WHEN the minister arrives at the court to which he is sent, the first thing he has to do is to present his letter of credence. He delivers the copy or the original to the secretary of state, &c. and then he requests an audience with the sovereign.

The audience is either private or public; of the last sort are the audiences given to great ambassadors. These

* *Les mémoires du Comte d'Avaux* furnish a number of examples of such communications. This matter is left to the direction of the minister; he ought to know how far he can take upon him to do it, without exposing himself to blame.

These solemn audiences were formerly preceded by the *public entry* of the ambassador, which ceremony is now become less frequent* among the Christian Powers of Europe. It is still customary with the Turks†.

The day for a public audience being fixed on, the court sends the person who is to perform the introduction, accompanied with other officers of the court, to the house of the ambassador, who, accompanied with his retinue (and, formerly, with the foreign ambassadors)‡, takes the coach-and-six sent him by the court, and makes his own coaches-and-six follow him. Arrived in the interior court of the palace, he is received by the proper officers of the court, and saluted with military honours. He is then conducted up the *ambassadors' stairs*, to the presence chamber§. There the sovereign is seated under a canopy; beside him

* It has never been customary between Spain and Austria, nor between courts of the same family. See DE REAL, l. c. v. 5. p. 309. The Turks do not give it to the ambassadors of all the Christian powers; see LE BREY, *Magazin*, v. 2. n. 2. The Pope gives it to ambassadors of obedience only. See *Cérémonial diplomatique de ROUSSET*, tome 2. p. 175. The disputes arising on different points of the ceremony seem also to have rendered it less frequent. We see, however, some recent examples of it. See MOSER, *Versuch*, v. 3. p. 251. *Beiträge*, v. 3. p. 204.

† See the description of some public entries and audiences in MOSER, *Versuch*, v. 3. p. 260. *Beiträge*, v. 3. p. 309, and the following.

‡ DE REAL, v. 5. p. 309. says that the custom ceased 1661. See, however, *les nouvelles extraordinaires*, 1785. n. 31.

§ The honour of going up the *ambassadors' stairs* and of being received in the *presence chamber*, is not always granted to ambassadors of republics. The ambassador of Genoa, for instance, at Rome.

him is the chancellor, or some other of his ministers of state, and on each side are the princes and princesses of the blood: the officers of the court and a number of persons of quality form a long line, through which the ambassador passes. The ambassador, accompanied with one or more of the officers of his retinue, approaches the sovereign in making three bows. The sovereign, standing and uncovered, makes a sign to the ambassador to be covered, in doing the same himself. This done *, the ambassador makes his speech †, in the middle or at the end of which he takes his letters of credence from one of the officers of his retinue, and delivers them to the sovereign, or to the minister of state who is beside him; after which, the minister of state, or, sometimes the sovereign himself, makes him a reply. Thus ends the ceremony, and the ambassador retires. He then has an audience of the consort of the sovereign ‡, and of the other princes and princesses of the blood §.

SECT.

* This right of being covered in the presence chamber is the characteristic mark of the audience of an ambassador. If he does not obtain the permission to do this, he is not received as ambassador. He does not do it, however, in his audience with empresses and queens; they make him a sign only that he has a right to do it. So it is in audiences with the Pope.

† When the speeches are ended, ambassadors kiss the hand of a princess who gives them an audience; but this is an honour due to the sex only.

‡ MOSER, *Beiträge*, v. 3. p. 402.

§ On the solemn audience at the Hague, see JANIÇOW, *état présent des Provinces Unies*, p. 1. On the audience at Venice see ANSLOT DE LA HOUSSEY, *hist. de Venise*, vol. 1. p. 27.

SECT. 2.

Of the Audience of Ministers of the inferior Orders.

MINISTERS of the second order may also obtain, from most courts, a public audience *. But both ambassadors and envoys usually content themselves, now-a-days, with a private audience. In which case they are introduced to the sovereign, who has only his minister or ministers with him, and who receives their credentials with little or no ceremony.

In many royal courts of Europe †, ministers of the third order, particularly residents and chargés des affaires, deliver their credentials to the minister of state, not being permitted to deliver them to the sovereign in person ‡.

SECT.

* See JANICOW, l. c. p. 97. A public audience is not, however, necessary to establish the authority of a minister. See a dispute on this subject in LAMBERTY, v. 1. p. 39.

† The particular ceremonial of each court decides here. The Emperor gives audience to ministers of the third order, sent by the states of the Empire. Russia does not. See WAHRENDORFF, 1750. ADELUNG, *Stattgeschichte*, vol. 7. p. 130. Neither does France, or Spain. *Hamb. Corresp.* 1783. 31. Jan.

‡ Whether the resident and chargé des affaires can be introduced to the sovereign afterwards, or not, depends on particular customs. Few courts seem to refuse it entirely. See, on that of Spain, *Hamb. Corresp.* l. c.

SECT. 3.

Of the first Visits.

AFTER a minister has been received at court, he ought to make it known to the foreign ministers at the same court, in order to be acknowledged by them in that quality. According to the ancient custom (which subsists yet at many courts, and particularly at that of Ratisbon), the newly arrived minister made this notification by a gentleman or secretary of embassy, on which all the ministers, of an equal or inferior rank, paid him the first visit, which he returned in due form and time. But, at present*, according to the ceremonial of the great Courts, the new-arrived minister makes a visit of notification himself by note or card, after which the other ministers visit him. It must be remarked, however, 1. that ambassadors refuse this first visit to ministers of an inferior order, who, when the ambassador has made his notification to them by a gentleman or secretary, ought to pay him the first visit, at the time appointed by himself; 2. that royal ambassadors sometimes refuse it to ambassadors of republics†; 3. that the Envoys sometimes refuse it to residents and chargés des affaires, and only make their notification

* This change seems to be very recent; it had not taken place at the Hague in 1700. See LAMBERTY, v. 1. p. 128.

† WIGUEFORT, vol. 1. p. 286, 292. GUTSCHMIDT, *de prerogativa ordinis inter legatos*. § 31.

notification by a secretary, &c. so that there are many contestations on this point of the ceremonial. Even where the ancient custom subsists, there are disputes about the manner of making the first visits, and about the order in which they are to be returned*.

SECT. 4.

Of Precedence in Visits of Ceremony.

IN the visits that ministers make to each other ; 1. the ambassador yields the precedence to the ambassadors that visit him †, without any regard to the dignity of his or their sovereign ; 2. he does not yield it to ministers of an inferior order ‡, although their sovereign may take the lead of his. In the visits that ministers of the second and third order make to each other, the precedence is always given to the visitant.

Q 2

SECT.

* CALLIERES, *manière de négocier avec les souverains*, p. 118.

† The ambassador of France now yields it to that of the United Provinces. See DE REAL, p. 41. and even to the ambassadors of the electors, sent to elect an emperor. See ROUSSET, *discours sur le rang*, p. 87. Even the ambassadors of the Emperor yield it to those of kings and electors. See GUTSCHMIDT, *de prerogativa ordinis inter legatos*, § 31. not. 4.

‡ *Mémoires d'ESTRADES*, vol. 2. p. 28, 400, 480.

SECT. 5.

Of Precedence before other Persons of the Court.

THE contestation, relative to rank, between foreign ministers and persons of birth and distinction at the court to which they are sent, are numberless*. 1. Ambassadors will yield to none but princes of the blood†. They claim a right to take the lead of all other princes, of all the officers of the court and ministers of state, and even of the cardinals‡. The ambassadors of kings have, more than once, claimed the precedence before the electors§ and princes of the Empire, in the houses of the latter. 3. Ambassadors claim the lead of the princes of the Empire in person, not only in the houses of the latter, but at the Imperial Court also||. The ministers of the second order, particularly the envoys extraordinary of kings, claim rank immediately after the family of the prince at whose court they are, and sometimes before the princes who are only relations.

SECT.

* BYNKERSHOEK, *quest. jur. publi.* l. 2. c. 9.

† See d'ESTRADES, *mémoires*, tome 2. p. 429, 432, 434, 439, 447. It was settled, 1749, relative to the first visit to the Stadtholder, after many disputes with the French ambassador, that the latter should make the first visit, and that it should be returned immediately.

‡ These latter, however, do not yield it; the Pope, on the contrary, claims the precedence for them. MOSER, *Vernuch*, vol. 2. p. 52. *Gründtumsrecht*, p. 100.

§ ROUSSET, *discours sur le rang*, p. 88.

|| See *Capit. Imp.* art. 200.

SECT. 6.

Of the Title of Excellency.

ALL ambassadors have now * an indisputed right to the title of *excellency*; but, of all ministers, they only have that right. If it is sometimes given to the envoys extraordinary of kings, and even to other ministers of the second order, it is, because it is due to them in some other quality than that of minister; or else it is given them out of mere complaisance †.

SECT. 7.

Of other Marks of Distinction given to Ministers.

THE ambassador is distinguished from ministers of the inferior orders by many points of the ceremonial. However, this depends so much on the particular usages of each court, that we can mention only

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such

* The title of excellency was first given to kings, then to princes and counts, and afterwards, particularly since the peace of Westphalia, to ambassadors. See GUTSCHMIDT, l. c. § 33. note k. MOSER, *actenmäßige Geschichte Excellenz-Titulatur*. in his *kleine Schr.* v. 2. p. 100. v. 3. p. 1. This title is given to the ambassador by every body, except by the sovereign to whom he is sent, and for this reason the cardinals refuse to give it during the election of the Pope. The weekly president at the Hague does not give either.

† J. J. MOSER, *von den Excellenz der Gesandten vom 2ten Rang*. 1783.—4.

such points as are most generally received: such is the right of going on visits, &c. of ceremony, in a coach-and-six, of ornamenting the horses with *fiocchi**, of being saluted with military honours†, of being admitted to balls and feasts‡, and at court on all days of ceremony. Great Courts grant less to ministers of the second and third order than the little courts do §; these sometimes yield as much to ministers of the third order, as the former do to those of the second.

SECT. 8.

Of Audiences during the Mission.

THE audiences, to which ministers of the first and second order are admitted in the course of their mission, are either ordinary or extraordinary, and the latter are either private or public. These last take place when there is a notification to be made in ceremony, as also at taking leave.

CHAP.

* See edict published at Rome, 1748. *Merc. hist. et pol.* 1748. vol. 1. p. 34.

† F. C. MOSER, *Von den militairischen Ehrenbewegungen der Generale*. In his *Ältere Schriften*, v. 6. p. 347. See what happened in Russia, 1763. *Merc. hist. et pol.* 1763. vol. 2. p. 353. 507. The custom of giving ambassadors sentinels before their houses, was preserved in Russia till 1763. It is now kept up no where but in Turkey, and there to ambassadors extraordinary only.

‡ ADELUNG, *Staatsgeschichte*, v. 7. p. 136.

§ *Merc. hist. et pol.* 1763, t. 2. p. 360.

CHAP V.

OF THE INVIOLABILITY AND INDEPENDENCE OF MINISTERS.

SECT. 1.

Of the Inviolability of a Minister.

ALL foreigners, entering into a state, are under the protection of the law of nations; but foreign ministers of the different orders, enjoy a higher degree of inviolability * than that insured to all foreigners by the general law of nations, which extends no further than protection from injury. This inviolability they derive from the dignity of the state they represent, and from the interest that every nation takes in the honour and security of those who are to transact its affairs in foreign countries. The sovereign, then, must be careful to abstain from every kind of violence against the person of a public minister, sent to his court, and he ought to punish, to the utmost rigour of

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* See BYNKERSHORE, *de foro comp. legatorum*, c. 1. p. 8. J. HOOGEVEEN, *legationum origo et sanctiones*, Lugdun. Batav. 1763. 4. SCHLIUSING, *de legatorum inviolabilitate*, Lips. 1690. Viteb, 1743.

the law, and as crimes of state*, every act of violence committed against him by others: provided, however, that the offender commits such violence against the minister, knowing him to be such, and provided he be subject to the jurisdiction of the sovereign. All the powers of Europe acknowledge this inviolability, in ministers of all the orders, from the moment they enter their territory† till they quit it; so that, the Christian states permit even the minister of an enemy, residing at their courts at the breaking out of a war, to return home in perfect security. The Turks only have preserved the barbarous‡ custom of imprisoning foreign ministers on account of a rupture with their courts. In the course of a war no minister can

* L. 7. D. ad L. Julian de vi publica l. ult. D. de legationibus.

† Provided, however, that the state has been informed of the mission beforehand; for, if this has not been done, the minister can claim no inviolability, till he has delivered his credentials. See ADLUNG, *Staatsgeschichte*, v. 6. p. 303. *Merc. hist. et pol.* vol. 124. p. 419. 525. 670. Still less can a person in prison, whether for a debt or some criminal matter, demand his release on producing a letter of credence, obtained posterior to his imprisonment.

‡ BYNKERSHOEK, l. c. chap. 2. § 6. The Turks imprison foreign ministers in the Seven Towers, as soon as a rupture, or even a dispute that threatens a rupture, takes place between them and the powers by whom such ministers are sent. They seem to consider foreign ministers as a sort of hostages. See LE BRAT, *Magasin*, v. 2. p. 205. LAUGIER, *histoire de la paix de Belgrade*, v. 1. p. 23. 84. and the following. Sometimes policy leads them to make exceptions. In 1736, they imprisoned the Austrian minister, while that of Russia was suffered to return home; and in 1787, they suffered the Austrian minister to return home while they imprisoned that of Russia.

can pass through, or enter, in safety, the territory of an enemy, unless express permission has been first obtained*.

SECT. 2.

Of Exterritoriality in general.

THE universal law of nations acknowledges in the minister a perfect independence in every thing that concerns, directly or indirectly, his functions as minister, and considers him, in that respect as *exterritorial*. But that part of the law of nations which is founded on custom, extends this exterritoriality still further. According to it, the minister, his retinue, his house, and his carriages, are usually considered, with regard to the rights of sovereignty, as out of the territory where the minister resides, and as in the state from which he is sent. This is what is now understood by exterritoriality. As it is, however, the effect of the will of nations, it is susceptible of limitation, and is, in fact, limited in many respects †.

SECT.

* HERTIUS, *de litteris commeatus pro pace*. F. C. PRETEL, *de legato ad hostem misso ipso jure gentium etiam sine litteris commeatus inviolabili*. Rint. 1708.

† It is clear, that if ministers had a right to exterritoriality in the most extensive sense of the term, they would enjoy many privileges and prerogatives they do not enjoy; and it is as clear that they do now enjoy more than is allowed them by the universal law of nations. We shall see both of them fully proved in the sequel, and that the general notion of exterritoriality, here given, is not sufficient for deciding on the question of right which may arise on the subject.

SECT. 3.

Of Immunity and civil Jurisdiction.

IN virtue of this extritoriality, the minister and all those belonging to his retinue*, as well as his property†, are exempted from the civil jurisdiction of the state‡. The minister can be cited before no tribunal, except that of the sovereign who sends him; but we must except here, 1. when he is a subject of the state

* Not extending to those who accompany the minister, without belonging to the embassy or being of the number of his family. In England, the foreign ministers, on arriving, give in a list of their retinue, and those only are exempted from the civil jurisdiction of the state. 10. Ann. c. 7. See also, for Portugal, the ordinance of 1748.

† GROTIVS, l. 2. c. 18. § 9. The exemption of ministers from the civil jurisdiction was settled in Holland by the ordinances of the States General of 11 August, 1676, and 9. Sep. 1679; and of the States of Holland, of 8 Aug. 1659. 30 July. 14 Aug. 1681. See the *Grout Pleacont Boek*, under the above-mentioned years. In England, by an Act of Parliament, 10 Queen Ann. c. 7. In Portugal by the ordinance of 1748.

‡ See BYNKERSHOEK, on this subject, cap. the last. The ministers sent from the states of the empire to the Imperial Court demand an exemption from the civil jurisdiction. There has been many contestations on this subject in the Aulic Council. It is now generally granted to those who are charged with state affairs only; but not to such as are, at the same time, agents for those who have suits depending in the council, nor to such as have this last quality only. TATISCHKE, *vermuth über die Frage: ob die Reichständischen Gesandte am Reichshofrath der Gerichtbarkeit des Reichshofraths unterworfen sind* REUS *Staatskanzley*, v. 15. p. 409.

state to which he is sent *, or, when he is in the service of the state to which he is sent; 2. when he has voluntarily acknowledged the jurisdiction of that state; 3. when, as plaintiff, he is bound to submit to the jurisdiction to which the defendant is subject, and consequently is obliged to plead, in case of an action against him arising from the process; 4. with respect to property, that which belongs to him in any other quality than that of minister †, is subject to the jurisdiction of the state, and may be seized on for causes not relative to the quality of minister; though, strictly speaking, the property belonging to him as minister is exempt from seizure, during the time of his mission ‡, yet, the mission once terminated, if he attempts to quit the state without paying his debts, the state may refuse to let him depart, or, at least, to carry away his property; and may even seize on this latter. There are instances of this right having been exercised ||, though generally it is not exercised §.

SECT.

* BYNKERSHOEK, l. c. c. 11. WIQUEFORT has in vain endeavoured to maintain the contrary.

† VON STECK, *von einem Gesandten der Handel treibt*, see his *Ausführungen*, 1776, p. 17. BYNKERSHOEK, l. c. chap. 14.

‡ GROTIUS, l. 2. c. 18. § 9. KULPIS, *Colleg. Grotian.* l. c. § 3. p. 109.

|| MOSER, *Versuch*, v. 4. p. 543, 555. *Merc. hist. et pol.* 1772, v. 1. p. 266.

§ The ordinance of the States General of 9th Sept. 1679, expressly forbids these seizures.

SECT. 4.

Of the criminal Jurisdiction.

MINISTERS and their retinue (the latter less generally) are exempted from the criminal jurisdiction of the state to which they are sent. A crime, then, committed by a minister, does not deprive him of the special protection of the law of nations and of that inviolability which the interest of his sovereign requires him to preserve. Nevertheless, if it be some crime immediately against the safety of the state, the sovereign has a right to act against him as against an enemy of the state. If the safety of the state requires it, his person may be seized, and he may even be put to death like another enemy. But it is doubtful whether, even in the case here mentioned, the criminal jurisdiction could be exercised against the person of a minister, and, on account of the consequences, it would be dangerous to establish the principle. It is a custom among the courts of Europe, when a minister has committed a crime of a private nature, to demand his recall * ; and if it be a state crime † to seize his person and

* But, in England, for want of an express law, ministers are not exempt from the criminal jurisdiction. See on the affair of the Count of Guerchy accused of poisoning. ARCHENHOLZ, *Briefe uber England*, 8 ter. Abs. (ed. 1.).

† A great number of ancient examples may be seen in WIGUEFORT, and BYNKERSHOEK, but particularly the conduct of England towards Gyllenborg, 1711. In France towards the Prince of Cellemare, 1718.

and keep him confined as long as the state is in danger, and when that danger ceases to exist, to release him and send him home. But even imprisonment is seldom had recourse to, if the danger is not so very pressing as to render it unsafe to send him home, or write for his recall. It is of little consequence to a state, whether the retinue of its minister be exempt from the criminal jurisdiction of the country where they reside; and it often happens, that courts do not grant the same exemptions to the retinues of foreign ministers as their own ministers claim for theirs.

SECT. 5.

Of the Jurisdiction over the Retinue of the Minister.

THE retinue of the minister, being exempt from the jurisdiction of the state, ought to be subject to the jurisdiction of their master, or of his and their sovereign. It belongs to the two sovereigns * to fix on the degree of jurisdiction that the minister shall exercise over his retinue †; for this point is very far from being

so

See *Mémoires de la régence du Duc d'Orléans*, tome 2. p. 153. In Russia towards the Marquis de la Chetardie, 1774. ADELUNG, *Staatsgeschichte*, v. 4. p. 134. and towards the Marquis of Botta, 1744. MOSER, *Versuch*, vol. 4. p. 374. *Beiträge*, v. 4. p. 290.

* BYNKERSHOEK (l. c. chap. 15.) says that the sovereign alone who sends the minister, may fix on the degree of jurisdiction he is to exercise over his retinue. But this seems to be extending the right of exterritoriality too far.

† WILLEBERG, *de jurisdictione legati in comites suos*, Gedani, 1705, 4.

so generally settled as not to admit of further contestations. A minister is never refused a more extensive authority over his servants, than that of a father over his family. Ambassadors claim a sort of civil voluntary * jurisdiction over their retinue, and which is very often granted them ; but, with respect to criminal jurisdiction, the right claimed by some ministers of imprisoning their servants in their own house, and of sending them bound to their sovereign †, is not generally granted them ‡; and much less does their extrajurisdictionality

* Among many acts of voluntary jurisdiction, I shall content myself with mentioning a few ; 1. receiving the deposit of a testament of one of his retinue. But, whether this deposit is sufficient to give validity to such testament, if made by some other subject of the sovereign, or by a foreigner, ought, I think, to be determined by the nature of the act, and by the degree of jurisdiction acknowledged in the minister. 2. Examining those belonging to his retinue whose testimony may be required by a judge, through the medium of the minister for foreign affairs. See, on this subject, *Essai sur divers sujets de politique*. 1779, 8. p. 36. I doubt, however, whether the principles laid down in this *essai* would be admitted without difficulty. 3. The ministers, of all the orders, are every where authorized to give passports to those belonging to their retinue, to subjects of their sovereign, and to foreigners (at the request of the ministers of their courts), to travel in the country of the sovereign of the minister who gives them.

† ADELUNG, *Staatsgeschichte*, v. 4. p. 302. The distinction of the case, where the persons of the retinue are subjects of the same sovereign as the minister, and where they are not, does not seem decisive here. See BYNKERSHOEK, l. c. ch. 15.

* † To avoid disputes on this subject, particularly at congresses of peace, ministers sometimes agree beforehand, to give up at once, to the magistrate of the place, those of their retinue who may commit disorders. See, for instance, the peace of Nimeguen and that of Aix-la-Chapelle.

ritoriality extend to the pronouncing of a criminal sentence, and causing it to be executed *.

SECT. 6.

Of the Right of granting an Asylum.

THE exemption from the civil and criminal jurisdiction extending to the dwelling of the minister, it is generally allowed that it cannot be entered by the ordinary officers of police, of excise, &c. like the house of a private person. On the other hand, it is manifest, that the minister ought not to have the power of sheltering criminals from the pursuit of justice, by granting them an asylum in his dwelling. But suppose that he does, or that he thinks the person innocent, or that his being in his dwelling is unknown to him; suppose either of these cases, is the state obliged to abide by the decision of the minister with respect to giving him up? or, if he refuses, has the sovereign a right to order a search,

* It is well known that Queen Christiana, being in France after her resignation of the crown, caused Monaldeschi to be put to death in her hotel. The court of France would have complained of this, without doubt, even had the Queen still been reigning. Ambassadors cannot expect, then, what is not granted to their sovereigns. Some Turkish ambassadors, however, have taken the liberty to commit such excesses: see *Mosca, Versuch*, v. 4. c. 19. The ambassadors of christian powers have, at Constantinople, a more extensive criminal jurisdiction than is allowed them at the christian courts, but then, in return, the Turkish ambassadors, sent to christian courts, claim a criminal jurisdiction still more extensive.

search, to force the minister to surrender the accused, or, to take him from his dwelling by force? These are the principal questions to be resolved, in examining, whether a minister possesses the right of granting an asylum or not.

According to the principles of the natural law, it would appear, that, if the minister knows that an accused person (whether innocent or guilty) has taken refuge in his dwelling, he ought not, unless he has some just and cogent reason for so doing, to refuse to give him up*; and that, if he does, he ought to impute to himself all the consequences of such refusal. However, according to modern custom, ministers, alleging the exterritoriality of their dwelling, or else particular usages†, claim the right of granting an asylum, and regard as an infraction of the law of nations, every violent measure taken by the court, in order to force from their dwellings any person that may have taken refuge there. Courts do, nevertheless, come to these extremities, when gentler means fail, particularly

* If, for instance, the court has consented to his receiving him. See the remarkable example of the taking of the Duc de Ripperda from the hotel of the English ambassador at Madrid, 1726. *Mémoires de MONTGON*, v. 1. n. 11. 12. 13. ROUSSET, *recueil*, v. 4. p. 69.

† At many courts, this right was formerly granted to ministers; but, from the nature of the right, every power is justified in declaring that it will no longer grant it, and this several of them have done. With others it yet subsists, but its extent is every where disputed, and is generally allowed not to extend to state criminals.

larly when a state criminal * is in question. Disputes on this subject must, consequently, be inevitable.

What has been said of the dwelling of the minister, may be said of his carriages. Though exempt from being searched like other carriages (at least at most courts), yet they cannot be employed to carry criminals out of the state, in order to save them from the hands of justice †.

SECT. 7.

Of the Right of Franchise.

THERE is not the least solid foundation on which ambassadors can claim this right ‡, in virtue of which they are authorized to exempt their whole neighbourhood from the jurisdiction of the civil magistrate, by placing the arms || of their sovereign on the houses. This abuse, formerly tolerated at some courts §, and
par-

* *Merc. h. et pol.* 1748, v. p. 1. 58, 205. MOSER, *Versuch*, v. 5. p. 265.

† See what happened at Rome, 1750. MOSER, *Versuch*, v. 4. p. 266.

‡ J. UPMARK, s. resp. O. TOERNER, *de franchisa quateriorum seu jure asyli apud legatos*. Upsal. 1706. 8.

|| On the custom of placing arms, see SCHOT, *juristisches Wochenblatt*, 3. Jahr. n. 33.

§ In Spain, where this custom subsisted, an endeavour was made to abolish it, 1594. See KHEVENHULLER, *Annales*, vol. 4. p. 1340. By an ordinance of 1684, the right of granting an asylum was limited to the

particularly at Rome*, subsists now in a few states only, and there but in a very trifling degree. In all the other states it has been very wisely abolished.

CHAP. VI.

OF THE RIGHTS OF MINISTERS IN RELIGIOUS MATTERS.

SECT. 1.

Of domestic Devotion in general.

THE domestic devotion which the father or head of a family performs in his house, surrounded by his children, relations and dependents, is of two sorts,
simple

hotel of the minister; and even there it has not always been respected. At Venice this right subsisted; and subsists still with respect to some houses very near to that of an ambassador. The protection that the ambassador of France gives to some houses at Constantinople, seems to be derived from another source. See LAUGIER, *Hist. de la Pains de Belgrade*, v. 1. p. 84.

* See, on the famous dispute between Louis XIV. and Pope Innocent XI, relative to the right of franchise, *March. Leventin Legatio Romana ejusque cum Romano Pontifice Innocent XI. dissidio*, 1688. Ed. 2. 1699. 12. SCHMAUSS, *corp. jur. gent. accad.* v. 1. p. 1069.

simple, and *qualified*. The first comprehends those acts of religious worship only which do not require the ministry of an ecclesiastic ; the second, those acts also which do require such ministry, and which form what is called the *sacres privés*. The first, being forbidden to no one by the natural law, may be exercised by all who are admitted into the state, and, consequently by a foreign minister. But qualified devotion, or the *sacres privés*, was forbidden to all private persons soon after the introduction of the Christian religion (as well by the general councils* as by the civil laws), and is still so forbidden. A particular permission is then necessary to be obtained, before it can be exercised, whether it be according to the forms of the established religion of the country or not. It remains then to know, whether a minister has a right to perform this qualified devotion in his dwelling.

According to the principles of the Roman Catholic religion, a minister is permitted, in case of necessity, to confine himself to the exercise of the simple domestic devotion, whether the religion of the country where he resides be Catholic or not ; it would, therefore, appear, that the exercising of the *sacres privés*, or qualified domestic devotion, is not one of the *essential* rights of a forcign minister †. However, in the case that the religion professed by the minister is not that of the

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country

* *Concil Gangrense*, c. 5, 6. *Laodiceum*, can. 57. See BOHMER, *de privatis legatorum sacris*, chap. 1. § 15.

† Nov. 18. l. 2. c. *de summa trinitate*, l. 3. c. *de heret.* l. 15. c. *de ep. et clericis*.

country where he resides, it would be rather hard to confine him to the simple domestic devotion, particularly when on a perpetual embassy. The general notion of the extritoriality of the minister and of his dwelling seems to give him a greater degree of liberty on this point, but this extritoriality itself admits of modification on all the points not essential to the object of the mission. Every thing here, then, must depend on custom and particular conventions.

SECT. 2.

Of Custom with regard to qualified Devotion.

THE custom, generally adopted since * the sixteenth century, is, to allow the right of qualified devotion to ambassadors, ministers of the second and even of the third order †, when, 1. the religion they profess is not, publicly or privately ‡, exercised in the place where they reside. 2. When there is not already a minister of their court §, at whose dwelling they may perform

* Even by the Turks and the barbarous nations out of Europe; but, with them, it is a consequence of treaties.

† See the disputes which took place at Cologne, about the beginning of this century, relative to the religious worship of the Prussian Resident. FABER, *Staatskanzley*, v. 14. p. 166. 220, and the following.

‡ The qualified devotion of the Protestant ministers, may, therefore, have ceased at Vienna, since the Emperor has granted to the Protestants the liberty to perform their worship in private.

§ When, for instance, the ambassador of a court is already in the exercise of this right, the envoy or other ministers of the same court can have

perform their devotions. If, as is often the case, we see ministers, particularly those of the inferior orders, who do not exercise this right, we are not to infer from thence, that it has been refused them, or that it would be refused them. The exercise of this right, like that of most others, may depend upon circumstances.

SECT. 3.

Of the Extent of this Right.

THE qualified domestic devotion granted to a minister includes, 1. the right of keeping a chaplain and other subaltern ministers; and, 2. that of performing, in his own dwelling, all the acts and rites of his religion, the effects of which do not appear in public *. But, 3. the exercise of this devotion is granted to the minister, his family and his retinue, only. Every state may forbid its own subjects, and even foreigners, to frequent the chapel of a foreign minister, and particularly

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particularly

have no pretensions to it; but a minister cannot be expected to content himself with frequenting the chapel of the minister of another court.

* For instance; he cannot give his chapel the outward form of a church; he cannot put bells, or play organs in it, &c. But, while he exhibits in public no part of his ceremonies, &c. it seems that he ought not to be interrupted, and that no restraint ought to be laid on him; yet we have seen conditions prescribed, more than once. For instance, that no sermon should be preached but in the language of the sovereign of the minister, or else alternatively, &c. See *Mémoires d'AVAUX*, v. 5. p. 201.

ticularly to partake of the sacraments there administered. Yet, latterly, few states are very rigorous in this respect, especially towards the subjects of the sovereign of the minister; nor, indeed, towards foreigners in general. 4. The chaplain of the minister is not authorized to perform his functions out of the dwelling of the latter, though this be sometimes connived at *.

SECT. 4.

Of the Cessation of this Right.

THE exercise of the qualified domestic devotion being granted in favour of the minister, it seems reasonable, that it should cease the moment he is absent. It is, however, commonly permitted to subsist, if the minister, in absenting himself for a time only, keeps possession of his dwelling †, leaves a chargé des affaires, his retinue, &c.; but the moment the embassy ceases, the right of qualified domestic devotion ceases also. It ought to cease also when either of the sovereigns dies; but, when the sovereign who sends the minister dies, it is customary to suffer the minister to
continue

* It is still more rare for the sovereign, to whom the minister is sent, to request the chaplain to exercise his functions out of the dwelling of the minister. See MOSER, *Vermäch.* v. 4. p. 187.

† There have been some instances of its being permitted to subsist in the dwelling of the chargé des affaires, but instances of this kind are very rare.

continue the exercise of his devotions ; and, as to the death of his own sovereign, it seldom has any effect on his embassy, except in cases where the sovereign leaves no successor *.

CHAP. VII.

OF IMMUNITIES GRANTED TO MINISTERS.

SECT. 1.

Of Imposts on the personal Estate and moveable Effects of the Minister.

THE extritoriality of the minister exempts him, and all his retinue, from the personal imposts to which as subjects of the state, they would be liable. With respect to duties, either direct or indirect, on merchandizes, an exemption from them is not essential to the quality of minister.

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Formerly

* In hereditary states, the successor usually sends new letters of credence to his foreign ministers, at the same time that he communicates to them the death of their former sovereign ; in which case the difficulty is ended at once. But, in elective states, the death of the sovereign must necessarily put an end to the functions of his ministers, and consequently to all their rights, as such, and among the rest to that of exercising the qualified domestic devotion. See what happened at Hamburg, 1740. *Mosca, Vengh*, v. 4. p. 192.

Formerly it was the custom to defray, either wholly or in great part, the expenses of foreign ministers, while on their mission. Since this is fallen into disuse * among the Christian powers, they have generally substituted in its room an exemption from duties †. Nevertheless, the enormous abuse that has been made of this exemption, at many courts, has caused it to be much restrained, or entirely abolished. At courts where it still subsists it subsists during the first months of the embassy only; and where it is entirely abolished, a gratification is given in lieu of it ‡.

It must be observed, however, that the dwelling and carriages of the minister are exempt from search, unless he consents to their being searched.

SECT.

* It was formerly almost universal; and we find instances of it even at the beginning of the present century: the embassy of the Czar in Holland, for example. Russia and Sweden agreed (1721) to leave it off. It is now entirely laid aside, except in the embassies extraordinary from and to the Turks, and other nations out of Europe. MOSER, *von dem Appointement oder Gehalt-eines Gesandten*, in his *kleine Schriften*, v. 1. p. 182.

† F. C. MOSER, *von der Zoll-und Accise—Freiheit der Gesandten*, in his *kleine Schriften*, v. 7. p. 1.

‡ In Denmark and Russia, where a general immunity subsisted, it was abolished in 1747. See DE REAL, v. 5. p. 106. In Holland 1749. See PESTEL, *comment.* § 433. For Saxony, see *Merc. h. et. p.* v. 124. p. 201. For England, see *Mémoires et négociations du chevalier d'EON*, p. 186. and the following. At present it seems to be a rule, with almost all the courts, not to allow this exemption but for the first six months of the embassy; counting if the communication between the two countries is by sea, from the time the sea becomes navigable. On the immunities of the ministers of the Empire, when at the Diet, see MOSER, *kleine Schriften*, v. 7. n. 1. § 25.

SECT. 2.

Of Imposts on the immoveable Property of the Minister.

THE immoveable property that a minister may acquire, should it be even the house in which he lives, is not exempted from the ordinary impost, any more than property of the same kind belonging to a foreign sovereign*. Such moveable effects also which it is clear a minister does not possess in his quality of minister, ought to be subject to the ordinary imposts.

SECT. 3.

Of Tolls, &c.

A MINISTER cannot, any more than another foreigner, demand an exemption from the ordinary tolls, intended to reimburse the expense of a public institution of which he partakes in the advantages; for instance, for turnpikes, bridges, &c. neither can he demand an exemption from postage for his dispatches, &c. nor is this granted to ministers in general; not even to ambassadors. There may, indeed, be some motive for exempting

* Some courts have purchased houses in foreign countries for their ministers; but it depends on the pleasure of the sovereign of the country where such houses are situated whether they shall be exempt from the usual imposts or not. They were, for instance, formerly exempt at the Hague, but, by the ordinance of 1649, the exemption ceased.

emptying them from post charges in those countries where the postage is become a sort of tax, as in Great Britain.

CHAP. VIII.

OF THE MANNER OF CONDUCTING NEGOTIATIONS.

SECT. 1.

Of Negotiators.

SOME embassies have nothing to do with negotiation, such as embassies of ceremony, those that are sent to give satisfaction or explain mistakes, and, sometimes, even embassies in ordinary. When negotiations are to be opened and carried on in form, the manner * of doing this differs with different states; especially if we compare the practice of royal states with that of republics.

SECT.

* The art of negotiating cannot be reduced to principle; it is an effect of talents, of a court education, and, in part, of the study of the most important negotiations. See, however, PEQUET, *de l'art de négocier avec les souverains*. MABLY, *principes des négociations*. CALLIERES, *de la manière de négocier avec les souverains*; nouvelle édit. Londres, 1737. t. 1. 2—12mo.

SECT. 2.

Of opening a Conference.

IN monarchical states, a minister sometimes negotiates with the sovereign himself in private audiences, * either verbally, or in presenting memorials † ; sometimes with the minister for foreign affairs, or with one or more commissaries, chosen by the sovereign at the minister's request. These conferences are sometimes held at the foreign ministers, sometimes at the apartments of the minister of state, or those of the commissary, and sometimes at the house of a third person.

IN republican states, it is customary to name deputies ‡ to open a conference with a foreign minister, and this conference is usually opened at the house of the minister or at that of a third person. The choice of these deputies depends, of right, on the will of the state only. It is an abuse to permit the minister to reject them, as is practised in some places

The minister often presents in writing the substance

* The constitution of the state ought to decide whether the sovereign can negotiate alone, or whether he ought to consult on this occasion the deputies of the different states. The latter is sometimes the case in Poland.

† It is customary when there is a *First Minister*, for the foreign minister to deliver him a copy of the memorial he is going to present at the audience.

‡ On the United Provinces, see JANIGON, vol. 1. p. 96. On the Rep. of Venice, where a foreign minister has to negotiate with a college of twenty-six persons, see LE BRÉT, *Vorlesungen*, v. 1. p. 251.

stance of what he has delivered by word of mouth; and there are several republics, which, according to their constitution, can enter into no deliberation on any proposition of a foreign minister, until such proposition be delivered in writing*. It is, however, a point of much dispute, whether a foreign minister is obliged, on requisition, to give in writing, or to sign, a copy of what he has delivered verbally†.

SECT. 3.

Of Corruption in Negotiations.

THE only question that presents itself here is, whether a minister has a right to make use of corruption, as a mean of succeeding in his mission. This question ought to be examined, at least, as to the theory.

A minister may certainly make what presents he thinks proper to those who are able to further his views (not asking any thing illicit of them), without being taxable with corruption. And, with respect to presents given to a subject to prevail on him to fail in his duty, and betray his country; it is not unlawful‡ to profit

* See on the United Provinces, d'AVAUX, *mémoires*, v. 2. p. 127. v. 4. p. 353. 363.

† See *Mémoires d'ESTRADES*, t. 3. p. 228.

‡ It will be recollected, that we are speaking here on the principles of perfect and external right only; on any other, corruption must be rejected with disdain, whether it aims at the violation of the perfect rights of foreign nations or not.

profit of the offer of a traitor, but, to endeavour to corrupt the fidelity of a subject, whether it be in prevailing on him to divulge secrets that his duty obliges him to keep, or to revolt against his sovereign, is to violate the perfect rights of such sovereign, and even of the state of which he is the head. All that can be said, with respect to the latter point, is, a state that makes use of corruption as a mean of succeeding in its negotiations with other states, cannot complain if those other states retaliate, whenever they may find it necessary.

In a case of such extreme necessity as would, generally speaking, authorize a state to violate its perfect obligations towards another, it might also be authorized to make use of corruption. Corruption in a case where national preservation is at stake may lose part of its immorality. But, without doubt, these cases are very rare, and we ought to be very careful not to extend them too far.

According to modern practice, it is well known how often this powerful mean is resorted to, but yet we cannot, we ought not to say, that it is *authorized* by custom. A custom, when illicit, is invalid; and, besides, all powers deny making use of this mean, and think themselves justified in complaining, when it is made use of against them.

CHAP. IX.

OF THE RETINUE OF A MINISTER.

SECT. 1.

Of a foreign Minister's Wife.

FORMERLY foreign ministers were never accompanied by their wives; this custom was introduced in the seventeenth century*, along with, or soon after, the perpetual embassies. It is well known how decidedly it is now established.

In virtue of the prerogatives of the minister, his spouse † has a still higher degree of inviolability than what is already due to her birth and sex. She participates in the immunities enjoyed by her husband; and, with regard to precedence, in all its points, she claims the lead of all the princesses, ambassadors' ladies, and ladies

* In 1649, the ambassador of France, in Holland, jeered the Spanish ambassador for having his wife with him, in observing: "that he was an hermaphrodite ambassador." See BYNKERSHOEK, *du juge compétent des Ambassadeurs*, ch. 15. § 7.

† See, in general, on this subject, F. C. MOSER, *die Gesandtin nach ihren Rechten und Pflichten*, in his *kleine Schriften*, v. 3. n. 2.

ladies of ministers of state, whose husbands yield to hers in the same points*.

SECT. 2.

Of Gentlemen and Pages.

THE gentlemen and pages of the embassy are intended to perform divers offices in the ceremonies, in order to make them more pompous and brilliant. They are sometimes paid by the court, sometimes by the minister, and sometimes they serve *gratis*. As they are a part of the retinue of the minister, they, of course, enjoy the immunities belonging to it. But the gentlemen, who accompany the minister, without belonging to his retinue, have no claim to any immunities whatever.

SECT.

* The ambassadress does not yield in this point, except to the princesses of the blood, and to the ambassadresses whose court takes the lead of hers. The visits between ambassadresses are performed on the same footing as those between their husbands, with the difference of some trifling points of etiquette, which it would be impossible to reduce to general rules. The wives of ambassadors and ministers, claim, at least, the same honours at court as are granted to those ladies whose husbands are of an equal rank with theirs.

SECT. 3.

Of Secretaries of Embassy.

THE secretaries of *embassy* and *legation* (who must not be confounded with the private secretaries of the ambassador or minister), are, most commonly*, appointed by the court. As secretaries of embassy and legation, they are under the particular protection of the law of nations, and enjoy the personal inviolability due to their quality. This inviolability is their due also as being comprehended in the retinue of the minister.

They perform many parts of the ceremonial, such as notifications, compliments, &c. and others relative to the mission, such as keeping the minutes of the dispatches, sometimes of the cypher, the archives of the embassy, the journal, &c†. When the minister cannot attend in person, he may send the secretary of the embassy to assist at conferences in his stead, and the latter may present memorials signed by the minister.

But,

* Some courts, however, leave their nomination to the minister (as France and the United Provinces); but this cannot put them on a level with his private secretaries, who are officers of his household; though, it is clear, the circumstance must render them more dependent on him than they otherwise would be.

† All here depends too much on circumstances to admit of general principles. In great embassies there is a chancery in all its formalities, the duties of which are divided among several persons; while, in embassies of less note, the whole sometimes falls upon one secretary.

But, it is a contested point, whether, in case of the minister's absence, or incapacity to attend, he can present them signed by himself. This difficulty is got over by naming the secretary chargé des affaires during the absence of the minister; and this is, indeed, generally done.

In whatever relates to the embassy, the secretary is under the command of the minister, but not in the rest of his actions; and, with respect to his person, he is subject only to the court who has appointed him.

CHAP. X.

OF THE MEANS OF ENDING AN EMBASSY.

SECT. 1.

Of the Extinction of Letters of Credence.

MINISTERS being mandatories of the state, it follows that their letters of credence and full powers must become void in case of the death of their own sovereign*, or of the sovereign to whom they are sent.

* That is, supposing the sovereign has sent them in his own name. If he has signed their credentials in the name of a body of

sent*. They must, then, in both cases be provided with new credentials, without which, they can neither continue to negotiate or perform their other ministerial functions, nor demand the honours and prerogatives due them as ministers; in such a situation, all they can claim is, their inviolability, till such time as they can quit the state. Nevertheless, in the practice, when circumstances make it reasonable to suppose that the interruption will not continue any time †, the court to which they are sent not only continues to treat them as ministers, but sometimes to negotiate with them also. But this depends wholly on the will of the sovereign at whose court they reside.

A minister whose credentials and powers authorize him to act for a certain time only ‡, or *per interim*, can act no longer than during the time specified, or till

states of which he is only the head, his death can have no influence on the credentials. See my *Essai sur la Légitimation des Envoyés de la Part des Comtes de l'Empire*, 1782. 8. But if, as in Poland, the ministers are sent in the name of the king and of the republic, it would seem, that the death of the king renders the credentials void.

* This is, also, supposing them to be sent to such sovereign alone; for if they are sent to him and to a body of states of which he is at the head, their credentials continue in force, notwithstanding his death.

† Ministers from hereditary states generally receive new letters of credence with the news of their former sovereign's death; in which case there can be no interruption at all.

‡ The Republic of Venice usually sends its ministers for two or three years only; but they must wait for their recall, and for the arrival of those who are to take their place. See LA BAST, *Verlesungen*, v. T. p. 328. In these letters of credence, however, no mention is made of the duration of their mission.

till the return of the minister whose place he supplies. His functions, in either case, cease, without his being recalled in form*.

SECT. 2.

Of a Recall.

AN embassy is sometimes terminated by a recall. This takes place; 1. when the object of the mission is accomplished; 2. on account of something that has no relation to the court at which the minister resides; 3. at the request of a court that complains against the minister and demands his recall; 4. for reasons of state; for instance, by way of retaliation†, in consequence of an infraction of the law of nations, and, in general, in consequence of any dispute that threatens a rupture between the two powers. In the latter case‡, the minister is often ordered to depart, without taking leave; but, in the two former cases (and sometimes even in the latter), the minister, if present, ought to request an audience at taking leave. At this audience, which is sometimes public and sometimes private, he presents

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* See the dispute between the Chevalier D'Eon, and the Count of Guerchy. *Lettres, mém. et négoci. de M. D'Eon*, p. 85.

† This takes place, when a sovereign thinks, that a foreign state has demanded the recall of his minister without sufficient cause. See ADELUNG, *Staatsgeschichte*, v. 4. p. 331.

‡ Yet, he sometimes requests, and obtains an audience before his departure, though the war be upon the point of breaking out.

his letters of recall, and makes a speech *. If the minister be absent at the time of his recall, he may take leave in writing, annexing to his own letter, his letter of recall. In both these cases he receives letters from the court where he has resided, which, if there be the least room for it, contain an eulogium on his character and conduct. After this he receives the ordinary or extraordinary presents, intended for him, and his necessary passports. Having thus taken leave of the court, he takes leave of the other foreign ministers, ministers of state, &c. which is done in visits, made in the same manner as his visits of arrival, and, this ceremony ended, he takes his departure.

SECT. 3.

Of the Departure of a Minister without being recalled.

SOMETIMES a minister terminates his embassy himself by quitting the place of his residence, without being recalled. This happens, 1. when, in virtue of his instructions, he may take leave without waiting for a recall in form; 2. when the sovereign†, at whose court he resides, requests him to take leave, or obliges him

* If the minister who takes his place is arrived, before his departure, or if a *chargé des affaires* is appointed to act in his absence, the minister who is recalled presents them at the audience, when he takes leave.

† C. H. BREUNING, *specimen juris controversi de jure expellendi legatum alterius gentis liberum*, Lips. 1764. 4. F. C. MOSEK *von Ausschaffung der gesanten*, in his *kleine Schriften*, v. 8. p. 81. v. 9. p. 1.

him to quit his territory. This latter is sometimes done by way of retaliation, or in consequence of the misconduct of the minister, or in case of an approaching rupture. 3. When he quits the court of his own accord, without taking leave. This is done when some gross infraction of the law of nations has been committed against his person.

SECT. 4.

Of the Death of a Minister.

AN embassy may be terminated by the death of the minister. Those who have the care of his interment have certainly a right to insist on his being buried honourably; but, whether a minister, of a religion not tolerated in the country where he dies, is entitled to a public solemn interment in the burial place, is a point which, in default of particular convention, must be determined on the principles of the religion of the country where he resided at the time of his death. In case the corpse is sent home to the country of the sovereign who has sent the minister, it is customary to exempt it from the ecclesiastical dues commonly called *jura stolæ*, which are paid by subjects only.

SECT. 5.

Of the Seal.

IN the case of the death of a minister, if there be another minister from the same court, or a secretary of embassy, present, he ought to put the seal on all the effects of the deceased*. If there be no other minister from the same court on the spot, nor any secretary of embassy, the minister of another court may do it, if authorized so to do by the deceased or the deceased's sovereign. The sovereign at whose court the deceased resided is the last person that can claim any right here†.

SECT.

* At Rome, if there be no secretary of embassy, the Cardinals Protectors of the nation do this.

† At Vienna, the court refused, formerly, to leave the sealing up of the effects of a deceased minister to the secretary of embassy, or to a foreign minister; but it was obliged to give way in this point to foreign powers, when the latter began to retaliate. Even the states of the Empire are now on the same footing, in this respect, with foreign powers; excepting, however, in what relates to those of their ministers, who are at the same time agents to the Aulic Council. Their effects, in case of demise, are sealed up by the Aulic Council, or, at least, the Council claims it as its right; and the method which has been adopted of separating the functions of minister and agent, seems to be the only mean of avoiding disputes on the subject. See *RUSS, teutsche staatsanweyung*, v. 15. p. 40. and, on the jurisdiction of the Aulic Council in general, *FREITSCHKE, versuch über die Frage: ob die Reichständischen Gesandte am Reichshofrath der Gerichtbarkeit des Reichshofraths unterworfen sind.*

SECT. 6.

Of the Departure of the Retinue and Effects of a Minister.

THOUGH, strictly speaking, the immunities and prerogatives of the embassy cease at the death of the minister, it is customary to leave his widow and retinue in the enjoyment of them for some time longer; and, if the widow quits the country, the effects of the deceased*, as well as her own, are exempt from the *droit d'aubaine*, and from sequestration†. But, if she chooses to remain in the territory, the court has undoubtedly a right to fix on a term‡, after the expiration of which, if she still remains, she is to be considered as subject to the state, and consequently to its laws, jurisdiction and imposts.

SECT. 7.

Of Embassies which terminate in Part.

SOMETIMES an embassy is partly terminated by changing it into an embassy of another order. This

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happens

* On the wills of ministers, see WILDEVOGAL, *de testamento legati*, Jenæ, 1711. J. F. KATZER, *de legato testatore*, Giesæ, 1740. 4.

† WILDEVOGAL, l. c. l. 1. ch. 2. § 10. and the following.

‡ J. J. MOSER, *Abhandlung über verschieders Rechtsmaximen*, Band. 2. p. 499.

happens when a minister assumes a more exalted quality; for instance, when a minister of the second order takes the quality of ambassador, on occasions of great ceremony; or, when a minister, after having been vested with the quality of ambassador or envoy-extraordinary, quits it, to assume that of minister of the second or third order*. In all these cases, the minister takes leave, in the quality which he lays aside, in presenting letters of recall, to which he subjoins letters of credence specifying his new quality. From that time he can claim no honours but such as are due to the quality which his new credentials attribute to him†. His receiving presents or not, on these occasions, depends on the custom of the court where he resides‡.

CHAP.

* There is no doubt but an ambassador may, consistent with honour, quit that quality, when taken on an extraordinary occasion, and become envoy or simple minister again; but there is a doubt, whether a minister plenipotentiary can return, with honour, to the post of secretary of embassy. See the *Lettres, mêm. et négociations du Chev. d'Eon*.

† Consequently, an ambassador, become minister of the second or third order, can have no claim to the title of excellency. See MosER, *von der excellenz der gesandten vom 2ten Rang*.

‡ See on England, *Mémoires de d'Eqq*, p. 96.

C H A P X I.

OF THE RIGHTS OF MINISTERS WITH RESPECT TO
THE STATES TO WHICH THEY ARE NOT SENT
AS MINISTERS.

SECT. 1.

According to the universal Law of Nations.

ALL the rights we have hitherto treated of, relative to embassies, exist, strictly speaking, only between the power that sends and the power that receives the minister. A third power, through whose territory a minister may pass (whether in going on, or returning from, his mission), or at whose court he may make a stay, without bringing with him letters of credence for such power, has an undoubted right to treat him as a private person, and to grant him no immunity or prerogative whatever, either as to his person or his effects*. And, even suppose a minister be sent to an association

* LEYER, *de legatis transiuntibus*, med. ad. D. Sp. 672. ACHENWALL, *de transitu et admissione legati in pacto repetendis*, Gottingen, 1748.4.

association of states, as to the Diet or to some circle of the Empire, it appears, that he cannot claim ministerial immunities at the court of each state composing the association; unless he has credentials for each court individually, or unless when actually on business which concerns the association.

SECT. 2.

According to the Customs relative to the Person of a Minister.

IN the practice, it is customary in time of peace, not only to permit foreign ministers to pass through the territory of a third power*, and to remain in it as long as they choose, but to treat those who pass through only, with marks of distinction; and as long as there are no disputes, they are often permitted to enjoy many of the prerogatives which are granted to foreign ministers. But, as this is looked upon as an act of mere politeness, and not as an obligation of the law of nations, all courts, in case of contestations, exercise their right of dispensing with it†.

In

* This is a natural consequence of the liberty of passage, generally established in Europe, and particularly with respect to the ministers of the States of the Empire, when going to, or coming from, the Diet or other assemblies of the Empire.

† See, on the affair of Goertz in Holland, 1711, BYNKERSHOEK, l. c. p. 100, and d'OMPTEDA, p. 571. The affair of Wartensleben at Cassell,

In time of war, the belligerent powers are under an obligation of yielding a full and perfect security to the ministers found in each other's territory, but belonging to nations with whom they are not at war*; but, nothing forbids the seizure of a minister of the enemy, if such minister comes into the state without the permission of its sovereign†.

SECT. 3.

Relative to the Effects of a Minister.

A MINISTER can claim no exemption from imposts or seizure for the effects that he conveys through the territory of a third power. The particular and reciprocal customs of some courts, and the deference that many small states shew, in this respect, to their powerful

Cassell, 1763. MOSER, *versuch*, v. 4. p. 130, and the following. *Merc. hist. et pol.* 1764. t. 1. p. 101, 104. t. 2. p. 357. WALDIN, *legationibus juxta universum*. 4. A minister who only passes thus, may be arrested for debt, and pursued with rigour. See JAEGER and SCHOT, *Juristischen Wochenblatt*, p. 1. p. 173. where may be seen an instance which happened in Saxony. See PUTTMANN, *Grundsätze des Wechselrechts*, § 107.

* The detention of the Marquis of Monti does not seem to form an exception to this rule. See the pieces on this subject, in ROUSSET, *recueil de mémoires*, v. 9, and d'OMPTEDA, *Littérature*, v. 2. p. 572, and the following.

† MOSER, *versuch*, v. 4. p. 120. *S'il est permis de faire arrêter un Ambassadeur, qui passe sans passeports par les états de ceux avec qui son maître est en guerre*, 1745. 4.

powerful neighbours, form an exception here; but this we cannot admit as any thing like a general rule*.

CHAP. XII.

OF SECRET EMBASSIES.

SECRET embassies are of several sorts. Sometimes a sovereign sends a person of confidence, to treat in secret of some affair of importance, or that requires dispatch, without giving him the quality of minister, or, at least, without permitting him to assume it openly, till the object of his mission is out of danger. If the court to which he is sent, be informed of the object of his mission †, he ought to be granted all the inviolability due to him as minister; if not ‡, he may be treated as a private person. Such persons can demand no part of the ceremonial due to them as ministers, while they forbear to discover their quality as such; and, in general, they are looked upon by all the other ministers as private persons.

CHAP.

* The moveable effects of the ministers of the states of the Empire, going to, and coming from, the Diet and other assemblies of the Empire, are exempt from imposts by the Capit. Imp. 1711, art. 8. § 11.

† This was the case of the Baron de Ripperda, Envoy from Vienna, for the peace concluded between Austria and Spain, 1725.

‡ Such was the case of the Abbé de Montgon, *secret chargé des affaires* of France, in Spain; but with the knowledge of the King of Spain. See *les Mémoires de MONTGON*, v. 1.

CHAP. XIII.

OF STATE MESSENGERS.

MESSENGERS * are the bearers between sovereigns and ministers of whatever they wish to convey with dispatch. On the one hand, it is easy to distinguish them from ministers, whom they do not resemble either in their quality or their functions, and, on the other, from a simple courier, who goes but from one post to another. Every sovereign grants, in a time of peace, a full and entire inviolability to the persons of messengers, as well as to the dispatches of which they are the bearers, whether they are sent to his own court, or are on their road to some other court; but then, in order to this, they must announce themselves as such, and produce, if required, the necessary passports †, &c. This inviolability has often been confirmed by treaty, and, to commit an act of violence against a messenger, is now looked upon as an enormous offence *.

Further,

* MOSER, *der Courier nach seinem Pflichten*, in his *kleine Schriften*, v. 4. n. 2.

† MONTGOM, v. 1. p. 459, and the following; and *les pièces justificatives*, n. 8, 9.

‡ On the murder of Major Sinclair, sent as messenger by the Swedish minister, from Constantinople to Sweden, killed in Silesia, 1739, see BUSCHING, *Magazin*, v. 8. p. 309. *Umständlicher Bericht von dem, 1739, an dem Kön. Schwed. Major Muleolm Sinclair fürsetzlich verübten grausamen Mord*. Berlin, 1741. 4.

B O O K VIII.

OF FORCIBLE MEANS, EMPLOYED BY A NATION IN THE DEFENCE OR PURSUIT OF ITS RIGHTS.

C H A P I.

OF RETALIATION AND REPRISALS.

SECT. 1.

Of forcible Means in general.

IN case of a difference between two sovereigns, he who complains of a violation of his natural or positive rights, ought, unless his pretensions be of an indisputable nature, to begin by sufficiently proving those rights, as well as the violation of them complained of. This done, if he cannot obtain due satisfaction by amicable means, or if he foresees that it would be useless to try such means, he may, if he does not choose to renounce satisfaction altogether, have recourse to forcible means, whether it be in defence or pursuit of his rights. Forcible means are, indeed, in such case,
the

the only ones that are left to sovereigns who acknowledge no judge or superior*.

Forcible means are of several degrees, which differ widely from each other, and every sovereign is obliged to confine himself to the employment of the lowest degree by which he can obtain due satisfaction. Above all, he ought to distinguish carefully the means of redress proper to be made use of in case of a violation of an imperfect obligation, from those which would be justifiable in case of a violation of a perfect obligation.

SECT. 2.

Of Retaliation.

THERE are many ways of violating an imperfect obligation. In general, a sovereign violates his perfect obligations, in refusing to permit or to do what equity and humanity dictate, and in doing what, in rigour he has a right to do, but which humanity and equity forbid

* This must be applied, with a good deal of circumspection, to the states of the Empire. In their differences with each other, they are obliged to carry their complaints before the tribunals of the Empire; except, 1. certain forcible means, which they are permitted to employ like sovereign powers (see the next sect.); 2. in the cases where the laws authorize them to make use of forcible means; 3. in cases on which the tribunals of the Empire, whether from the nature of their jurisdiction or from circumstances, cannot decide. In their differences with foreign nations, they are hindered mediately only from exercising all the rights, touching this point, belonging to sovereign states.

forbid. Particularly, 1. in refusing to observe a point of simple custom ; 2. in introducing into his dominions some partial right or law, to the prejudice of foreigners*.

From the nature of imperfect rights and obligations, it is clear that no violation of them can authorize the use of forcible means, or the infraction of perfect obligations, in the pursuit of redress ; but, it is no less clear that, in order to obtain such redress, a sovereign may make use of retaliation. He may, for instance, refuse to comply with the same custom, with respect to another sovereign, that that sovereign has refused to comply with, with respect to him ; or he may refuse to comply with some other custom which is equivalent to it. He may introduce a partial right or law, to the prejudice of such foreigners as have done the same, with respect to him or his subjects. By these means he re-establishes reciprocity, or obliges unfriendly powers to change their conduct.

These acts of retaliation are much in use, as well among the sovereign as the demi-sovereign states of Europe.

SECT.

* It must not be understood, that every little inequality to be found in the legislation of two states, ought to be considered as a partial right or law, that would authorize retaliation. A partial right, in the private affairs of subjects, implies a distinction made between subjects and foreigners, to the prejudice of the latter. See b. 3. chap. 8. sect. 7. See also LUDWIG, *gelehrte Anzeigen*, v. 1. p. 73. J. G. BAUER, *Meditationes de vero fundamento quo inter civitates mittitur retorsio juris*, Lips. 1740.

SECT. 3.

Of Reprisals.

A SOVEREIGN violates his perfect obligations in violating the natural or perfect rights of another. It matters not whether these rights are innate, or whether they have been acquired by express, or tacit covenant, or otherwise.

In case of such violation, the injured sovereign may refuse to fulfil his perfect obligations towards the sovereign by whom he is injured, or towards the subjects of such sovereign. He may also have recourse to more violent means, till he has obliged the offending party to yield him satisfaction, or till he has taken such satisfaction himself, and guarded himself against the like injuries in future.

Whether the state or its subjects be the offending party, if the state refuse to make satisfaction, the property of each of its subjects, coming within the reach of the injured state, is liable to seizure (in which case such subjects have a right to be indemnified by the state to which they belong); and even the persons of such subjects may be seized; but the life of an innocent person cannot be taken, unless in extraordinary cases, where there is no other means of obtaining the satisfaction due, and of preventing future violations*.

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* If the ambassador or messenger of a state has been put to death by another state, the former state would not, on that account, have a right

There are many acts, by which a sovereign refuses to do or to suffer, or to suffer what he is perfectly obliged to do or to suffer, or by which he does what he is, ordinarily, perfectly obliged to omit, in order to obtain satisfaction for a real injury sustained; all these acts are called *reprisals*. Consequently, reprisals are of many sorts: the *talio*, by which an injury received is returned by an injury exactly equal to it, is one sort of reprisals; but the use of it is not indiscriminately permitted on all occasions.

SECT. 4.

Of Seizure.

ONE of the species of reprisals the most frequently employed, is the seizure* of the property and persons of the subjects belonging to the state from whom an injury has been received. This is done with a view of obtaining satisfaction by the confiscation of the property seized, if all endeavours should fail of obtaining it from the offending state.

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right to put the ambassador or messenger of the latter to death; but in time of war, a prisoner of war may sometimes be put to death in order to punish a nation that has violated the laws of war. In the first case, the injured nation has other means of obtaining satisfaction, and of guarding against such violations for the future; but war being of itself the last state of violence, there often remains no other means of guarding against future violations on the part of the enemy.

* LYNKER, *de jure reprisalium*, Jen. 1691. 4. C. v. BYNKER-SHOEK, Q. J. P. L. L. c. 24. KAHLE, *de justis reprisalium limitibus cum a gentibus tum a statibus Imperii observandis*. Gottingen, 1776. 4.

SECT. 5.

Extent of Reprisals.

A STATE can make reprisals for injuries committed against itself or against its subjects; but not in favour of a third power*, even should such power request it.

SECT. 6.

The Sovereign only has the Right to authorize Reprisals.

FORMERLY it was frequent enough to see the subjects of one state making reprisals on those of another†; but the disorders resulting from such a practice, and the dangers to which the state itself was exposed by leaving the use of such violences in the hands of individuals, have induced since the fourteenth century, the states of Europe, in general, to withhold from their subjects the exercise of this dangerous right§. Subjects, before they can now make reprisals on foreigners,

* VATTTEL, p. 1. liv. 2. § 348. GROTIUS, liv. 3. chap. 2. BARBERAC, in his notes on BYNKERSHOEK, *du juge compétent*, chap. 22. §. 5. n. 1, 2. VORT, *ad D. de judiciis*, n. 31.

† GROTIUS, liv. 2. chap. 2. § 7. n. 4.

§ BOUCHAUD, *théorie des traités de commerce*, p. 483, and the following. DE REAL, p. 401. Sometimes this point has been settled by treaty. See, for instance, the treaty of 1662 between France and Holland, art. 17.

reigners, are obliged to obtain *letters of marque* or of *reprisal* *.

SECT. 7.

Of the Difference between Reprisals and War.

WHATEVER difference there may be in the different species of reprisals, they resemble one another in that they are all determinate acts of violence, and that they are exercised separately; but, when all these species of reprisals are exercised at once, they form a sort of warfare; indeed, they no longer differ from war †.

CHAP. II.

OF THE COMMENCEMENT OF WAR.

SECT. I.

Definition of War.

WAR is that state, in which men constantly exercise acts of indeterminate violence against each other.

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* EMERIGON, *traité des assurances*, v. 1. p. 569.

† VATTTEL, v. 2. l. 2. § 345.

It is *private* or *public*; the first takes place between individuals in the state of nature, the second between men in society.

Public war is of two sorts, *civil* and *national*. *Civil war*, in which members of the same state wield the weapons of destruction against each other, is never lawful, in *simple* states, but in cases of the last extremity; as when the sovereign is obliged to arm in order to punish his rebellious subjects, or when the subjects can dissolve the ties of submission which hold them in obedience. In *compounded* states it is never lawful, except each has a right to act as a free state, or except in the case of a war of execution.

National war is a conflict between nation and nation. It never can be undertaken or carried on but by the authority of the sovereign*; but he may vest the right of making war in such of his subjects as he thinks proper†.

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* The violences committed by the subjects of one nation against those of another, without authority from their sovereign, are now looked upon as robberies, and the perpetrators are excluded from the rights of lawful enemies.

† Thus the India Companies of England and Holland, who enjoy a territorial superiority with respect to their possessions out of Europe, have also obtained from their sovereigns the right of making war. Their troops and vessels ought, therefore, to be treated as lawful enemies. PAPET, *de jure belli societatum mercatorum majorum*.

SECT. 2.

Division of national Wars.

NATIONAL wars are *offensive* or *defensive* *. War is offensive on the part of the sovereign who commits the first act of violence against another, whether in entering his territory with an armed force, attacking him on the high seas, or in the territory of a third power. It is defensive on the part of him who receives the first act of violence. But, it must be observed, that if a sovereign sees himself menaced with an attack, he may take up arms in order to ward off the blow, and may even commence the exercise of those violences † that his enemy is preparing to exercise against him, without being chargeable with having begun an offensive war. Such measures, in such a case, are no more than the means of simple defence.

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* In almost every war, both parties claim the defensive. This is done in order to throw on the enemy, as the aggressor, all the injuries arising from the war, and to influence the effects of the defensive alliances he has formed with other powers. See *Beiträge zur Kriegsgeschichte*; v. 10. p. 169. MOSER, *Beiträge*, v. 1. p. 8, and the following.

† We may add a third sort of war, that in which both parties take up arms at the same time. History furnishes us with examples enough of this sort of war; but it furnishes no example of its having given rise to rights different from those arising from other wars.

SECT. 3.

Of Reasons which justify War.

NOTHING short of the violation of a perfect right, either committed, committing, or with which a nation is threatened in future, can justify the undertaking of a war *. On the other hand, every such violation, when proved, and when amicable means have been tried in vain, or when it is evident that it would be useless to try such means, justifies † the injured party in resorting to arms.

It is impossible that the sentiments of the belligerent parties should not be in direct opposition with regard to the justice or injustice of the war ‡ ; yet, if it be not manifestly unjust, their own welfare induces them to consider it as lawful, as far as respects the treatment of the enemy §, and the validity of conventions and treaties of peace.

SECT.

* See, on this subject, the writings mentioned by M. D'OMPTEDA, *Litteratur*, v. 2. p. 626, and the following.

† Unless the parties have before agreed, that certain injuries shall not be looked upon as sufficient grounds for war ; as was done at the peace of Utrecht, and other treaties of peace.

‡ It is well known that the ostensible reasons for undertaking a war must seldom be confounded with the real motives.

§ Thus the christian powers are induced to treat as lawful enemies the barbarians of Africa, though the motive of the latter is often nothing but robbery ; and thus policy often induces a sovereign, in the cause of a civil

SECT. 4.

Of a Declaration of War.

THE universal law of nations acknowledges no general obligation of making a declaration of war to the enemy, previous to a commencement of hostilities*. Many of the ancient nations looked on such a declaration as essential, and it was practised in Europe †, till the seventeenth century ‡: but, now-a-days§, nations content themselves with publishing a declaration of war through their own dominions ||, and explaining their motives to other

civil war, to treat his rebellious subjects as lawful enemies; but this, it must be remembered, is not to be construed into an acknowledgment of their independence.

* C. V. BYNKERSHOEK, *ut bellum legitimum sit indictionem belli non videri necessariam*. See his *Quæstiones juris publici*, l. 1. c. 2.

† Formerly, it was even thought necessary to annul the treaties existing with the enemy, before war was declared. See LEIBNITZ, *préface à son cod. dipl. et pol.* n. 41. 115. No nation does this now, except when induced to it by some motive of policy. See KENNINGS, *Staatschriften*, v. 1, p. 65. n. 9.

‡ The last instances of solemn declarations of war are those of 1635 (See VASSOR, *hist. de Louis XIII.*, p. 1. l. 38. p. 399) and 1637. See HOLLBERG, *Dänische Reichshistorie*, v. 1. p. 241. J. G. GONNE, *Entdeckung der Ursachen warum die Kriegsankün digun unter freien Völkern für nöthig gehalten worden*. See SIBENKES, *juristisches Magazin*, v. 1. n. 8.

§ On the modern custom of declaring war, see EMERIGON, *traité des assurances*, v. 1. chap. 12. sect. 35. p. 559, and the following.

|| This publication is made with much solemnity in England. See ADELUNG, *Staatsgeschichte*, v. 8. p. 57. AYER, *de jure solemnî circa declarandum*

other powers in writing. Publishing of war in this manner is looked upon as so essential, that nations have often demanded a restitution of every thing taken from them by the enemy before such publication *. Sometimes, however, nations get rid of such demands by insisting, that the war has been tacitly declared.

SECT. 5.

Sequel of the Declaration of War.

FROM the moment a sovereign is in a state of war, he has a right, strictly speaking, to act as an enemy, not only with respect to the persons and property found in the territory of the enemy, but also with respect to his enemy's subjects and their property, which may happen to be situated in his own territory at the breaking out of the war. He has a right, then, to seize on their ships found in his ports, and on all their other property; to arrest their persons, and to declare null and void all the debts which the state may have contracted with them †.

However, nations, for their mutual benefit, have been induced to temper the rigour of this right. 1. In
a great

clarandum bellum inter gentes morationes accepto. Gott. 1787. 4. A particular motive hindered this publication in 1780. See ARCHENHOLZ, *Briefe über England*, v. 1. p. 438.

* See *Mémoires historiques des négociations de 1761*.

† GROTIUS, l. 3. c. 9. § 4. PUTTENDORFF, l. 8. c. 6. § 19. 20. *Wolff, jus gent.* § 1184. 1198.

a great number of treaties, nations have stipulated, in case of a rupture between them, to give each others subjects, residing in their territory at the breaking out of a war, or coming to it, not knowing of the declaration of war, a specified time * for the removal of themselves and their property. 2. Sometimes it is agreed to let the subjects of an enemy remain during the whole course of the war, or so long as they live peaceably and quietly †. 3. Besides these precautions taken between nation and nation, many states have provided by particular laws and privileges, for the protection of the persons and property of enemy's subjects ‡. 4. Generally speaking, a nation does not venture to touch the capitals which the subjects of the enemy may have in its funds, or that it may otherwise owe to such subjects §.

Where there are neither treaties nor laws touching these points, nations continue still to seize on all the property belonging to its enemy's subjects which is carried

* See the examples of the seventeenth century, in BYNKERSHOEK, *Quest. jur. publ.* l. 1. c. 2. p. 12. This term was fixed at six months between England and the United Provinces, 1667; between France and the United States of America, 1778, art. 20: at nine months between France and the United Provinces, 1739: at a year between Spain and the United Provinces, 1714: at the same between England and Russia, 1776, art. 12: at two years between Denmark and Sicily, 1748, art. 39: at the same between Denmark and Genoa, 1756, art. 38; and between the United Provinces and Sicily, 1752.

† MOSER, *Versuch*, v. 9. p. 46. See the treaty between France and England, 1786.

‡ EMERIGON, vol. 1. p. 568, and the following.

§ EMERIGON, vol. 1. p. 567, and the following.

carried into its territories after the declaration of war*. Sometimes, too, we see a state make seizures provisionally, till assurance is received, that the state who has done the injury is ready to make reparation, or fulfil its obligations †.

Whatever be the conduct observed towards the subjects of an enemy, his ambassadors, or other public ministers, are always obliged to quit the state, as soon as a war breaks out ‡; but they are allowed to depart and remove their property, without the least molestation. The Turks are the only nation who violate this law §.

SECT. 6.

Of the Recall of Subjects.

EVERY sovereign has a right to call home those of his subjects who are in an enemy's country, or in any other country, when he thinks their presence necessary to the defence of the state. He has an undoubted right to forbid his subjects to serve the enemy against their country, and to punish them in case of disobedience. Ordinances || are usually issued in some states,

* Ordinance of the King of Spain, 1762. MOSER, *Versuch*, v. 9, p. 59.

† MOSER, *Versuch*, v. 4. p. 52. 54.

‡ MOSER, *Versuch*, v. 9. p. 55.

§ See book 7. chap. 5. sect. 1.

|| VON STECK, *von der Abberufung der in auswärtigen Kriegsdiensten stehenden Reichsglieder und Vasallen*; the same, *Vertheidigung der Grundsätze*

states, at the beginning of a war, in virtue of which offenders in this way are punished by confiscation of their property or otherwise. However, the manner in which war is now carried on often induces a sovereign to confine the effects of those ordinances to his vassals, or to those who are in his own service or in that of the enemy*.

Every sovereign has a right to forbid his subjects to carry on a correspondence, or keep up a communication with the enemy; to prohibit all contraband commerce with him, the entry of merchandizes which are produced or manufactured in his territory, and all insurance on his vessels†. Policy and circumstances usually determine the degree of rigour with which these prohibitions are enforced‡.

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welche in der Abhandlung von Avocatorien sind aufgestellt worden; in his Abhandlungen aus dem deutschen Staatsund Lehnrecht, Halle, 1752. 8.

* MOSER, *Versuch*, v. 9. p. 43, and the following.

† VON STECK, *vog Versicherung feindlicher Schiffe und Güter*; see his *Ausführungen*, 1776. n. 9. MAGENS, *von assuranzen*, in the preface.

‡ BOUCHAUD, *théorie des traités de commerce*, p. 250, and the following. MOSER, *Versuch*, v. 9. p. 72.

CHAP. III.

OF THE MANNER OF MAKING WAR.

SECT. I.

Of the Laws of War.

THE law of nations permits the use of all the means, necessary to obtain the satisfaction sought by a lawful war. Circumstances alone, then, must determine on the means proper to be employed; and, therefore, war gives a nation an *unlimited* right of exercising violence, against its enemy. But, the civilized powers of Europe, animated by a desire of diminishing the horrors of war, now acknowledge certain violences which are as destructive to both parties as contrary to sound policy, as unlawful, though not entirely forbidden by the rigour of the law of nations. Hence those customs which are at present called *the laws of war*.*

These laws, which are sanctioned by custom, and in some cases even by treaty, have been observed with greater punctuality since war has been carried on by the

* *Grundliche Nachricht vom Kriegsceremonial und Kriegsmanier*, 1745.

* S. STAUBE, *de la raison de guerre*, in the supplement to his *Ebauche des lois naturelles*.

the means of regular troops: nor does any civilized nation now think itself justifiable in departing from them, except the enemy sets the example, or except an urgent necessity, arising from extraordinary circumstances, admits of exceptions authorized by *reasons of war*.

SECT. 2.

Of the Persons by whom Hostilities ought to be exercised.

ACCORDING to modern usage, every individual in a state is not allowed to fall upon the enemy, even after war has been declared against him *. Soldiers, by the order of their commanders, and such other subjects as may obtain express permission for the purpose from their sovereign †, may lawfully exercise hostilities ‡, and are looked upon by the enemy as lawful enemies; but those, on the contrary, who, not being so authorized,

* Although the ancient form of declaring war be preserved, it is now but a mere form, in general; but yet there are cases where the sovereign expressly orders all his subjects to take up arms. See MOSER, v. p. 206.

† For this reason, those who wish to arm privateers are obliged to obtain *letters of marque*; furnished with them, they become lawful enemies. BYNKERSHOEK, *Qu. jur. pub.* l. 1. c. 18, 19, 20. S. FR. WILLENBERG, *de eo quod justum est circa excursiones maritimas*. Gedan, 1711. 4.

‡ The wars which are carried on out of Europe, by the India Companies, are carried on by the authority of the sovereign. They are a consequence of the territorial superiority, granted to those companies over their possessions out of Europe. C. F. PAULI, *de jure belli societatis mercatoria majoris privilegiata*, Halle, 1751. § 21, and the following.

sized, take upon them to attack the enemy, are treated by him as banditti; and even the state to which they belong ought to punish them as such.

If subjects confine themselves to simple *defence*, it would appear that circumstances ought to determine, whether, acting by the presumed order of their sovereign, they ought to be treated as lawful enemies or not. They are, however, generally treated with more rigour than those who act by express authority.

SECT. 3.

Of unlawful Arms.

AMONG the arms and other means of doing injury to an enemy, there are several which custom has declared to be unlawful. Such are, among the secret means, poison *, assassination†, &c.‡ but not different
sorts

* It is a violation of the laws of war to poison wells in order to destroy the enemy, and also poison the commander in chief or any other enemy of distinction. Since the beginning of the seventeenth century the use of poisoned arms even has been looked upon as unlawful. See Buzot, *Kriegsanmerkungen*, v. 5. p. 236. He there gives an account of a convention touching this point, 1675. See also TRINKHUSIUS, *de illicito venenatorum armorum usu*, Jen. 1607. H. COCCESI, *de armis illicitis*, Fref. ad Viad. 1698. It is also against the laws of war, knowingly to send among the enemy, persons attacked with the plague or any other contagious disease.

† It is, therefore, a gross violation of the laws of war to set a price on the head of a commander in chief, or other enemy of distinction; unless the example has first been set by the enemy. MOSER, *Versuch*, v. 9. p. 2. p. 257. and the following.

‡ For instance, it is against the laws of maritime war for the commander of a vessel not to hoist the flag of his nation *before* he begins the combat.

sorts of stratagems. Among the open means, certain arms the use of which is too cruel*, and which the object of the war does not render absolutely necessary.

SECT. 4.

Of taking the Life of an Enemy.

FROM the moment we are at war, all those who belong to the hostile state become our enemies, and we have a right to act against them as such; but our right to wound and kill being founded on self-defence, or on the resistance opposed to us, we can, with justice wound or take the life of none except those who take an active part in the war. So that, 1. children, old men, women, and in general all those who cannot carry arms, or who ought not to do it, are safe under
the

combat. See BOUCHAUD, p. 377. Many stratagems of this sort are permitted in a land war.

* For instance, it is contrary to the laws of war to load cannon with nails, pieces of iron, &c. to charge a musket with two balls, or with disfigured balls, &c. the first augmenting too much the number of sufferers, and the latter wantonly increasing the pain. The use of red hot shot [invented 1574, at the siege of Dantzick], of chain and bar shot, of carcasses filled with combustibles, boiling pitch, &c. have sometimes been proscribed by particular conventions between maritime powers. These conventions, however, extend no further than the war for which they are made; and, besides, they are never applicable except in engagements of vessel for vessel. See, on the use of the machine called *infernal*, the dictionary of *Treux*, under the word *machine*.

the protection of the law of nations, unless they have exercised violence against the enemy. 2. Retainers to the army, whose profession is not to kill or directly injure the enemy, such as chaplains, surgeons, and, to a certain degree, drummers, fifers, trumpeters, &c. ought not to be killed or wounded deliberately. 3. Soldiers, on the contrary, being looked upon as ever ready for defence or attack, may at any time be wounded or killed; unless when it is manifest that they have not the will, or have lost the power to resist. When that is the case; when wounded, surrounded, or when they lay down their arms and ask for quarter; in short, from the moment they are reduced to a state in which it is impossible for them to exercise further violence against the conqueror, he is obliged, by the laws of war, to spare their lives; except, however, 1. when sparing their lives be inconsistent with his own safety*; 2. in cases where he has a right to exercise the *talio*† or to make reprisals‡; 3. when the crime committed by those who fall into his hands justifies the taking of their lives.

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* See an instance at the battle of Agincourt. VATTTEL, v. 3. § 151.

† In the first years of the war between Spain and the United Provinces, the latter often massacred their prisoners in imitation of the former; but both parties soon found it their interest to desist from these barbarities, and to make war in the usual manner. This happens in almost all civil wars.

‡ See the instance of Capt. Asgill, who was seized in America by way of reprisal for a crime committed by an English Captain. *Nouvelles extraordinaires*, 1788. n. 7.

It is always justifiable to make the vanquished soldiers prisoners of war, and even those who are not of the military profession.

SECT. 5.

Of Prisoners of War.

WHEN the conqueror receives the conquered as prisoner of war, it is looked upon that all violences between them have ceased. The ancient custom of making slaves of the conquered is no longer practised by the powers of Europe, except by way of retaliation towards the barbarians*. Christian powers generally keep prisoners of war under a guard, till they are ransomed† or exchanged by cartel, or till the peace. Officers are often released on their parole of honour‡, by which they promise not to serve, against the power who releases them, for a certain time, or during the war; and to appear at an appointed place as often as they shall be duly summoned. Those who, regardless of their parole, take up arms, while the convention is observed on the other side, are looked upon as infamous; and, if they again fall into the hands of the enemy to whom they have given their parole, he is not, by the laws of war obliged to give them quarter.

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* BYNKERSHOEK, *Quæst. jur. publ.* l. 1. c. 3. *Nouvelles ext.* 1787. n. 2. n. 32. supplement.

† HAUTIUS, *de lictis*, in his *Opusculis*. v. 1. diss. 4.

‡ MOSER, *kleine Schriften*. v. 10. p. 67. and the following *Teutsche Kriegsanzeygen*, 1760. v. 1. p. 575. 1761. v. 1. p. 133.

SECT. 6.

Of those who are not admitted as Prisoners of War.

THOSE who, unauthorized by their profession or the order of their sovereign, exercise violences against an enemy, and fall into that enemy's hands, have no right to expect the treatment due to prisoners of war : the enemy is justifiable in putting them to death as banditti. So also, soldiers who employ means which are contrary to the laws of war, or who act without orders from their chief, may be punished in consequence by the enemy.

Those who, under a false name and disguised character, enter the camp of the enemy, in order to serve as spies*, or to empoison, assassinate or corrupt, are punished by an ignominious death ; being, besides, looked upon as acting without the order of their sovereign.

SECT. 7.

Of the Sovereign and his Family.

NEITHER the sovereign nor his family can be looked upon as sheltered, by the law of nations, from the

* See the instance of Major Andre. *Allgemein historisches Taschenbuch für*, 1784. In general, see BRUCKNER, *de explorationibus et exploratoribus*, Jenæ, 1700. 4. *Hannov. gelehrte Anzeigen*, 1751. p. 383, and the following.

the violence of the enemy. Those of them who bear arms may be resisted or attacked, and, consequently, wounded or killed; and those who do not bear arms may be made prisoners of war. Nevertheless, according to modern manners, 1. It would be against the laws of war to aim deliberately at the person of a sovereign, or of a prince of the blood royal*. 2. The family of a vanquished sovereign is not only treated with more tenderness than other prisoners of war, but is usually exempted from captivity†. 3. In general, sovereigns endeavour to soften the rigours of war in every thing that has no influence with respect to its success: for instance, they grant a free passage to whatever is intended for each other's tables, and, sometimes even presents and compliments pass between them, upon the principle, that it is their states and not they, that are at war.

SECT. 8.

Of conquered Subjects.

THE conqueror has, strictly speaking, a right to make prisoners of war of all the subjects of the hostile state, who may fall into his power, though they have committed no violence against him; and, of course,

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* See, however, the instance at the siege of Dantzick under Charles XII. and MOSER, *Versuch*, v. 9. p. 180.

† MOSER, *Versuch*, v. 9. p. 146, and the following. ADELUNG, *Staatsgeschichte*, v. 8. p. 274.

he has a right to remove them to another country *. But, now-a-days, the conqueror generally carries his rights, in this respect, no further than to submit such subjects to his domination, to make them swear fealty to him, to exercise certain rights of sovereignty over them, such as raising and quartering troops among them †, making them pay taxes, obey his laws, &c. and punishing as rebels those who attempt to betray him or shake off his yoke.

The intention with which a country or province is taken possession of, generally determines the conqueror in the alterations he makes in the form of government, if he makes any at all. It is clear, the conqueror is not obliged to preserve the constitution of a conquered country or province, nor to leave the subjects in possession of the rights and privileges granted them by their former sovereign; unless he has made them a promise to that effect, previous to their submission.

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* It has been, and is yet, a dispute, whether the modern law of nations permits the removal of the subjects of conquered countries or provinces. Their sovereign never fails to complain of it. MOSER, *Versuch*, v. 9. p. 1. p. 299.

† MOSER, *Versuch*, v. 9. p. 1. p. 296.

SECT. 9.

Of the Rights of the Conqueror with respect to the Property of the Enemy.

THE conqueror has a right to seize on all the property of the enemy that comes within his power: it matters not whether it be immoveable (*conquête, eroberung*), or moveable, (*butin, beute, booty*). These seizures may be made, 1. in order to obtain what he demands as his due, or an equivalent; 2. to defray the expenses of the war; 3. to force the enemy to an equitable peace; 4. to deter him, or by reducing his strength, hinder him, from repeating, in future, the injuries which have been the cause of the war. And, with this last object in view, a power at war has a right to destroy the property and possessions of the enemy, for the express purpose of doing him mischief.

However, the modern laws of war do not permit the destruction of any thing, except, 1. such things as the enemy cannot be deprived of by any other means than those of destruction, and which it is at the same time necessary to deprive him of; 2. such things as after being taken, cannot be kept, and which might, if not destroyed, strengthen the enemy*; 3. such

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things

* Thus it is lawful to raze fortresses, sink vessels, sink or spike up cannon, blow up magazines, &c.

things as cannot be preserved without injury to the military operations*. To all these we may add, 4. whatever is destroyed by way of retaliation.

SECT. 10.

Of the Distribution of Property taken from the Enemy.

THE victorious sovereign claims the dominion over the provinces and countries conquered by his arms. He appropriates to himself the national domains, and all the property belonging to the dispossessed sovereign; and particularly all the fortresses, ships of war, arms, and all other implements of war. The rest of the moveable property, taken from the vanquished soldiers, is commonly given up as booty to the army, or the corps employed on the expedition†.

With respect to the immoveable property of the enemy's subjects, and the moveable property of those of them who have not taken up arms in the war, though the conqueror has a right, strictly speaking, to appropriate the whole of it to himself‡, yet, according to the modern practice, it is left to the proprietors, and

* For instance, it is generally acknowledged that no depredations ought to be committed on gardens, vineyards, &c. but if it be necessary to fix a camp in them, &c. reasons of war authorize their destruction.

† The distribution of the booty between the sovereign and his soldiers, depends on the military code of the state to which they belong. It is a point that does not belong to the law of nations.

‡ GROTIUS, *de jure belli et pacis*, l. 3. c. 6. § 1.

and a contribution * is exacted in its stead. This contribution once paid, whether in money, produce, or service, the invaders ought to pay for all they afterwards receive from the conquered subjects; except it be for such services as every sovereign has a right to require from his subjects.

Extraordinary cases, when places are given up to pillage, which is sometimes done to punish those who are found in them †, and sometimes by way of retaliation, form an exception here.

In maritime wars the private property of the enemy's subjects is never spared. In order to encourage privateering, those concerned in it are allowed to hold all the merchant vessels and merchandize they take from the enemy, or his subjects ‡, without any reserve
whatever,

* VOGEL, *de lytro incendiario*, Kiloniæ, 1703. F. E. VOGT, *de lytro incendiario*, Lips. 1719. 4.

† For instance, for not yielding in time, or for having acted contrary to the laws of war.

‡ It belongs to each state in particular to make regulations concerning the division of the booty taken by privateers. The sovereign often reserves to himself the ships of war, arms, and ammunition; but sometimes he grants them a recompense for taking such vessels; and this recompense is usually proportioned to the number and weight of the guns taken. Sometimes the privateers are obliged to give up part of their booty to the state, or to the board of admiralty; as in Holland, for instance. See PESTEL, *comment. de republica Batava*; § 432. BYNKER-SHOEK, *Quæst. jur. publ.* l. 1. c. 18. 19. BOUCHAUD, *théorie*, p. 383. and the following. HUBNER, *de la saisie des bâtimens neutres*, v. 2. p. 1. c. 4. § 3.

whatever, with respect to the redemption of them by the proprietor *.

SECT. 11.

Of Property recaptured, &c.

WAR suspends all the laws of property between the belligerent powers, but not between them and neutral powers †: so that, although an enemy may seize on the property of an enemy, and dispose of it with all its appurtenances ‡, still the right of the original proprietor does not cease, as long as he has not expressly or tacitly renounced it, or as long as he has not given it up as lost. He has therefore, not only a right to retake it from the enemy, but also to claim it from
a third

* In the treaty of commerce between the King of Prussia and the United States of America, 1785. art. 28. the first example has been given of a convention, in virtue of which, "all merchant and trading vessels employed in the exchange of the productions of different places, shall pass freely and without molestation." See the collection of deductions by the minister of state, the Count of Hertzberg, v. 1. p. 475.

† PUFFENDORFF, l. 4. c. 6. § 14. GROTIUS, l. 2. c. 9. § 1. On the theory of the Roman laws touching acquisitions made during the war, see HEINECCI, *inst.* § 348.

‡ BYNKERSHOEK, *Quaest. jur. publ.* l. 1. c. 6. *Quousque extendatur immobilium possessio bello quaesita.*

a third possessor *. This right is acknowledged, too, with respect to all territorial conquests †.

With regard to moveable property, it is a generally received maxim, that when property, lawfully captured, has been twenty-four hours in the hands of the captors ‡, or, if captured at sea, has been conducted into the middle of a fleet or into a free port §, the right of the original proprietor ceases, and a third person may lawfully make an acquisition of it ¶. In such cases, it is supposed that the original proprietor looks upon his property as lost, or has given up all endeavours to re-capture it ¶.

SECT. 12.

Of the Right of Postliminium.

WHEN a power succeeds in re-conquering a country, or re-capturing a vessel, it would seem, that according to the rigour of the law of nations, the re-conquered

* MEERMANN, *von dem Recht der Eroberung nach dem Staats- und Völkerrechte*, Erfurth, 1774. 8.

† This question, among others, was debated on at the time Dunkirk was bought by the French (See *Mémoires d' Estrades*, v. 1. p. 346), and when the town of Stettin was ceded by Russia to the King of Prussia, 1713, before the former had obtained the cession of it by a treaty of peace.

‡ Vattel, *droit des gens*, l. 3. § 196.

§ EMERIGON, v. 1. p. 494. and the following.

¶ EMERIGON, v. 1. chap. 12. sect. 27.

¶ Vattel, l. 3. § 196.

conquered territory, or vessel, as well as all property, of whatever description, found therein, ought to return to the original proprietors. And, this principle is strictly adhered to with respect to national and immoveable property; for, 1. the national domains return to the sovereign along with the sovereignty, and the sovereign ought, of course, to re-establish the constitution existing previous to the conquest. 2. Such immoveable property belonging to the subjects as has been seized on by the enemy, returns, in virtue of the right of *postliminium*, to the original proprietors. But, as to moveable property taken in a land war, the right of *postliminium* ceases when the booty has been twenty-four hours in the hands of the captors*. In a maritime war, 1. if the re-capture be made by vessels of the state, the re-captured vessels and merchandizes return to the original proprietors, after a certain proportionate deduction to defray the expenses of the re-capture †; 2. if the re-capture be made by a privateer, neither vessel nor merchandize returns to the original proprietor; except, 1. when the re-capture is made within twenty-four hours after the capture ‡; 2. when the capture

* The right of *postliminium* operates when the booty is re-taken in less than twenty-four hours. See the instance of the town of Lierre, which was taken and re-taken in the same day. 1595. DE THOU, *hist. sui temporis ad h. a.* liv. 19.

† See the regulations made, touching this point, between France and Spain. EMERIGON, v. 1. p. 497. and, on those made in England, see WESKIT, *theory and practice of insurance*, s. v. re-capture, n. 5.

‡ Even in this case the proprietors, in France and England, are obliged to give up a third for the expenses of re-capturing. See EMERIGON

capture has been made by pirates *, or, 3. when it has been made against the laws of war in general †. The exception does not hold good in the two last cases, unless the re-capture is made from the first captors.

SECT. 13.

Of Safeguards.

SOMETIMES certain villages, estates, or other detached possessions, as villas, farms, &c. belonging to the subjects of the enemy or of neutral powers, are protected from the ravages of the invader's troops by safeguards, granted by the commander-in-chief of those troops.

These safeguards are granted at the request of the proprietors; consequently, they ought to be provisioned and paid by them: and, in case of a counter-invasion, by which the first invaders are driven from the country, the inviolability of the safeguards ought ever to be respected by the victor; who ought, besides, to send them in safety to the commander who has had the goodness to grant them.

Sometimes

son and WISKET, in the places above-mentioned. In Holland no attention is paid to the space of time, the privateer has always two-thirds of the re-captured ship and cargo. See BYNKERSHOEK, *Quæst. jur. publ.* l. 1. c. 5. p. 28.

* EMERIGON, l. c. sect. 24.

† For instance, if the capture has been made on a neutral sea. See EMERIGON, v. p. 1. 300.

Sometimes the invader grants letters of protection or other tokens, certifying that such or such places are under his safeguard.

SECT. 14.

Division of military Expeditions.

THE object of every military expedition is, either to resist the enemy, who is advancing to seize on our territory, or to act offensively against him in order to render ourselves master of his territory, or, generally speaking, to weaken him by all the lawful means in our power.

Military expeditions may be divided into *great* and *little*. *Great expeditions* are such as whole armies, or, at least, considerable bodies of regular troops, are engaged in; as battles, or actions, shocks, sieges, assaults of fortresses, fortified towns or camps, taking possession of open towns and undefended districts, provinces or countries. *Little expeditions* are undertaken by small corps of troops, and very frequently by volunteer or free companies or corps.

In maritime war, we must distinguish the battles, engagements, and assaults, in which the fleets and squadrons of men of war belonging to the states are engaged, from those little expeditions which are carried on by privateers, and which are generally directed against merchantmen only.

SECT.

SECT. 15.

Of Battles.

It is in battles that the laws of war ought to be adhered to with the most scrupulous exactness, as well with regard to the arms made use of as to the treatment of the vanquished.

The victor, he who remains master of the field of battle, ought to take care of the wounded, and bury the dead*. It is against every principle of the laws of war, to refuse or neglect to do either.

However, it is sometimes a question, who is master of the field †, and in such a case, a truce is agreed on for some days, during which both sides bring in their own wounded, and bury their own dead.

SECT. 16.

Of a Siege.

THE taking of a fortress, or fortified town, is effected by surprise, by a blockade, or by a siege. In the two last cases, the place surrenders by capitulation,

* In conventions made during the war, it is customary to stipulate expressly for the fulfilment of this duty, dictated by humanity.

† MOSER, *Versuch*, v. 10. p. 2. p. 81.

tion, or is taken by assault after being summoned in vain*.

All the means necessary to the reduction of a fortress are justified by the laws of war; consequently, there are cases which may authorize the demolition or burning of the suburbs. But, except in cases of necessity, it is now admitted, that the besiegers ought to direct their artillery against the fortifications only, and not, intentionally, against the public edifices†, or any other buildings, either within or without the ramparts.

SECT. 17.

Of the taking of a Fortress or fortified Town.

If a fortress or fortified town surrenders by capitulation‡, on that capitulation depends the fate of the garrison,

* According to the laws of war, this summons ought to precede the assault; and, indeed, it is usually repeated several times, before the assault is determined on.

† There are cases, however, which justify the besieger in threatening to burn the public edifices: for instance, to deter the besieged from making signals from the towers or steeples, by the tolling of bells, &c. This was done formerly much oftener than in our days. We find an instance of it at the siege of Vienna by the Turks, 1683. Perhaps it is that which Mr. Moser has in view in speaking (in his *Grundlehren des Völkerrechts*) of a custom, which, as he has described it, would be a very singular one indeed.

‡ See the Count of Arco, *de capitulationibus*. J. C. MEIS, *de civitatibus de editione*, Lips. 1689. See d'OMPTEDA, *Litteratur*, v. 2. p. 648.

garrison, arms, warlike stores*, and of the inhabitants and their property.

The terms of a capitulation depend entirely on circumstances; they are usually more or less honourable as the situation of the besieged is more or less favourable; but if the place after being duly summoned, refuses to surrender, and is taken by assault, those found in it are obliged to submit to the discretion of the victor: all the garrison can expect, is, to have their lives spared if they immediately lay down their arms†. It is, however, customary for the victor to forbid pillage on such occasions.

SECT. 18.

Of little Expeditions.

LITTLE expeditions‡ are carried on by volunteers or free corps, or else by small detachments of regulars||. They are always lawful, when undertaken by
due

* If the place has attempted defence, the bells of the churches, as being fit to make cannon of, may be seized by the victor, unless duly ransomed.

† In this case, it is not lawful to take the life of the governor nor of the garrison; it is, therefore, quite useless to make use of menaces of this sort in the summons. Their lives can be taken only in cases where the defence has been continued against the laws of war, and these cases are certainly very rare. VATTTEL, l. 4. § 143.

‡ LA CROIX, *traité de la petite guerre*, 1752. EWALD, *von dem keinen Krieg*, Cassel, 1785. 8.

|| MOSER, *von dem Parthiegängern*, in his supplement to his *Grundsätze des Völkerrechts in Kriegzeiten*, 1750.

due authority, and conducted according to the laws of war. But, the abuses to which too multiplied a division of the troops is liable, often induce the belligerent powers to fix, by convention, the number that such parties shall consist of, to render them lawful *. In that case, the parties which are met with by the enemy of a less number than the one agreed on, are treated as are the subjects who commit hostilities without the order of their sovereign ; that is to say, they are refused the treatment due to lawful enemies, and are punished as marauders or banditti. We must be understood here as not speaking of stragglers, whom the fortune of war has separated from their corps.

CHAP.

* The number of cavalry has often been fixed at fifteen, and of infantry at nineteen ; but this cannot be looked upon as a generally received custom.

CHAP. IV.

OF CONVENTIONS ENTERED INTO WITH THE ENEMY DURING THE WAR.

SECT. 1.

Of general Conventions.

THE belligerent powers often enter into general conventions, either at the beginning or in the course of the war. By these conventions, they promise not to make use of such or such arms *, or such or such means of injuring each other; settle the conditions and the manner to be observed in the exchange or redemption of prisoners of war; make arrangements relative to passports, safe-conducts, flags of truce, contributions †, &c.

The duration of these conventions is for a certain number of years, or for the war; but it is not usually extended to future wars.

x 2

SECT.

* Du MONT, v. 8. p. 310.

† VATTÉL, v. 3. § 165.

SECT. 2.

Of particular Conventions.

THE course of a war, of any extent, must ever furnish occasions for entering into particular conventions. Such are, 1. capitulations *, in virtue of which a body of troops †, a fortress, a town, a province, or a country ‡, submits to the enemy on certain conditions; 2. arrangements concerning passports, safe-conducts, safeguards, the neutrality of certain places, provinces, &c. 3. suspensions of hostilities for a certain time, such as take place between the besiegers and besieged after an expedition, and between armies after a battle; 4. truces, general or particular.

Truces, including suspensions of hostilities, import, generally speaking, a cessation of all hostility, and a desisting from all enterprises which the enemy would have been able to hinder us from executing, if no truce had existed. Truces, properly so called, whether made for a definite or indefinite time, import an obligation on the parties to revoke them, before they recommence hostilities; and, according to a generally received custom, this revocation ought to take place three days, at least, before hand.

When

* LUDOVICI, *de capitulationibus bellicis*. Halm, 1707.

† MOSER, *Versuch*, v. 9. p. 157. and the following.

‡ MOSER, *Versuch*, v. 9. p. 176. and the following.

When a general truce is agreed on for several years*, such a truce differs from a peace in this respect only; that the dispute, for which the war was undertaken, remains undecided, and that the truce once expired, both parties may again have recourse to arms, without the ceremonies that usually precede a war.

SECT. 3.

Of the Manner of treating with the Enemy.

WITH respect to the manner of treating with the enemy, 1. according to modern practice, when the besieged hoist a flag of truce (a white flag), they are understood to ask thereby for a cessation of hostilities, and for a parley, in order to capitulate. In that case, after the besiegers have answered their signal, hostilities immediately cease on both sides, and persons of confidence are sent to treat. 2. When a vessel hoists a flag of truce, it is looked upon she has surrendered. 3. In conformity to long established custom, the drums

x 3

and

* It is very rarely that such truces are made between the christian powers: that between Spain and the United Provinces, 1609, for twelve years; and that between the Emperor, France, and Spain, 1684, for twenty years, are examples. The Turks look upon themselves as obliged, by their religion, to make only truces with christians; but latterly they have, more than once, been obliged to deviate from this principle. See DE STECK, *von den Friedensschlüssen der Osmannischen Pforte*, in his *erhebliche Gegenstände*, 1772. n. 9.

and trumpets (who for some centuries past have, on these occasions, supplanted the ancient heralds *), as well as the persons sent to treat, bearing the usual signals of peace †, are allowed to pass in safety to the enemy, and, while with him, to enjoy an entire inviolability; that is, provided they do nothing beyond their functions, and contrary to the laws of war. 4. Passports ‡ and safe-conducts are granted on both sides to those who are sent to treat, in order that they may pass unmolested through the territory or camp of the enemy.

SECT. 4.

Conventions made with the Enemy are obligatory.

ALL the conventions entered into in the course of the war, are full as obligatory as if they were made in time of profound peace §. Though, in general, a state of war authorizes us to deprive an enemy of all the rights he may have acquired by convention, as well as of his possessions, yet we are understood to have tacitly renounced this right, with regard to conventions made in the course of a war. Indeed, were this not the case, it would be ridiculous to make such
con-

* WIQUEFORT, v. 1. p. 36. DE REAL, v. 5. p. 486.

† WILDVOGEL, *de buccinatoribus eorumque jure*, JENÆ, 1711. 4. § 41.

‡ HERTIUS, *de litteris commeatus pro pace*.

§ *Abhandlung von der Unverletzlichkeit der Waffenverträge.*

conventions * ; and it would, moreover, be impossible to treat with an enemy at all, and, consequently, impossible to terminate a war †. In short, such conventions are as sacred as treaties ; and a deviation from the former can never be justifiable, but in cases that would justify a deviation from the latter ‡.

SECT. 5.

Of Hostages.

As a security for the fulfilment of conventions made in the course of the war, it is still customary to place hostages § in the hands of the party who would suffer by a non-fulfilment. If the other party breaks

x 4

his

* This reasoning is applicable to conventions made in time of peace, touching what may take place in future wars. Such conventions remain obligatory during the war, if the treaty subsisted at the time of the rupture.

† It may be asked, may not the cause of one party be so unjust as to justify the other in violating such conventions ? Is a sovereign, for instance, who is obliged to make war against his rebellious subjects, to be bound by the conventions he makes with them ?—It seems that such sovereign renounces all exception in his favour here ; and that, by making a convention with them, he tacitly engages to treat them as enemies in form. Besides, policy generally induces him to do so.

‡ See the different arguments for and against the right of deviating from the convention made at Klosterzeven, between the Duke of Cumberland and Marshal Richelieu, 1757. *Teutsche Kriegsmanley*, v. 5. p. 55. v. 6. p. 126. v. 7. p. 922. v. 8. p. 4. v. 9. p. 650. MOSER, *Vernunft*, v. 10. p. 1. p. 185. and the following.

§ DE STECK, *observations subsidiaires*, chap. 1, 2, 29.

his engagements, it is allowable to treat his hostages with severity, but not to take their lives*, unless for some crime that they have committed, or by way of retaliation.

CHAP V.

OF ALLIES, SUBSIDIES, AND AUXILIARIES.

SECT. 1.

Of the Right of one Power to assist another.

A SOVEREIGN may be obliged to join his forces to those of another power; sometimes in fulfilment of his treaties of alliance, and sometimes in consequence of a particular connexion existing between him and such power; or, he may do it from his own choice. In none of these cases does he act against the law of nations, if the cause he espouses be not unjust. To a sovereign so situated, there results two sorts of rights and obligations; 1. relative to the power whom he assists; 2. relative to the enemies of that power.

SECT.

* GROTIUS, liv. 2. chap. 15. n. 7. chap. 21. n. 11. DE STICK, *ed. subjective*. chap. 22.

SECT. 2.

Of Alliances.

ALLIANCES are simply defensive, or they are offensive at the same time. An alliance is simply defensive when the allies promise to assist each other in case either should be attacked the first, or be in danger of an attack, from some other power. It is offensive and defensive*, when they promise to assist each other, not only in case of a first attack, but even should either of them make the first attack on some other power.

Both sorts of alliances are either general † or particular. They are general, when they extend to all wars in which either of the allies may be engaged; and particular, when directed against a particular power ‡, or confined to a particular war.

Alliances are formed sometimes before ‡, and sometimes after, the beginning of a war. As to their duration, it is sometimes for a definite, and sometimes for an indefinite § space of time, and sometimes for ever.

* An alliance may be simply offensive, but it is generally defensive at the same time.

† Offensive alliances are most commonly particular, yet there are some which are general; such, for instance, as the *family compact* of 1761.

‡ Almost all general alliances are of this number.

§ For instance the *family compact* of 1761.

ever*. The allies either promise a specific number of troops†, or vessels, or of both; or they promise a certain aid in money‡, or to assist each other with all their forces, or finally, to make a common cause.

SECT. 3.

Of Subsidies.

SIMPLE treaties of subsidy must be distinguished from alliances. A treaty of subsidy is a convention by which one power engages, in consideration of a certain sum or sums of money to bring into the field a specific number of troops, &c. to be in the pay and service of another power. The time for which such troops are to remain in such service is sometimes determinate and sometimes not.

A power

* As the alliance between France and the United Provinces, 1785.

† Reciprocal guarantees of possession, so often entered into by the powers of Europe in their treaties of peace, have the nature of general defensive alliances; but the aid to be given is not specified in them.

‡ Sometimes it is agreed between the contracting parties, that both, or one of them, shall have the liberty of choosing with respect to the manner of giving the promised aid; for instance, whether it shall be given in troops, vessels, &c. or in money. In a case of this kind, when the aid is demanded, and it is given in money, an estimation must be made of the troops, vessels, &c. Generally the difference between the price of infantry and cavalry is as three to one. The rest depends on circumstances, which vary too much to admit of any general rule. See, however, MOSER, *von der unter den Europäischen Souverainen üblichen Proportion zwischen der Hülfe an Mannschaft, Schiffen oder Geld*. See his *vermischte Abhandlungen*. 1750. p. 1. p. 84.

A power often receives a subsidy, in consideration of which it engages to keep a certain number of troops, &c. in readiness for service, and sometimes only to augment its own forces*.

SECT. 4.

Of the reciprocal Obligations of Allies.

AT the breaking out of a war, we often see disputes arise among the allied powers concerning the fulfilment of their treaties of alliance. Sometimes the power, from which the promised aid is solicited, denies or calls in question the existence of the case for which the treaty was made (*casus fœderis*), and sometimes alleges exceptions which dispense with the fulfilment.

When we consider that every power may decide these points according to its own judgment, we shall not be astonished that the promised aid of allies has been so often solicited in vain.

SECT. 5.

Of the Rights of Allies during the War.

SUPPOSE the promised aid to be given when demanded, it remains for us to speak of the manner of carrying

* Sometimes treaties of subsidy have no other object than to engage a power, in consideration of a sum of money, to remain neuter.

carrying on the war. And here it is essential to distinguish clearly between a war which the allies carry on in common, and a war in which one of them does no more than furnish the other with a number of auxiliary troops.

We shall confine ourselves to the first of these in this section.

In a war carried on in common, 1. the allies act in concert in the appointment of a commander-in-chief, in planning the principal military operations, and, in short, in all the arrangements concerning the war*. 2. The allies ought to divide between them the booty and conquests made by their common arms†. 3. The right of *postliminium* ought to be strictly observed between them.

No ally is justifiable in making a separate peace, or declaring himself neuter; unless, 1. that necessity obliges him so to do; 2. that the other ally has first failed of his engagements; or, 3. that his ally refuses to make peace, though the enemy offers to do it on equitable terms. Still less is one ally justifiable in joining the enemy of the other.

This natural obligation, not to desert an ally, is usually expressly confirmed in treaties of alliance.

SECT.

* These points are sometimes the subject of particular stipulations in treaties of alliance; see, for instance, 1748. MOSER, *Versuch*, v. 10. p. 1. p. 71.

† Disputes often arise on this subject, though the partition of conquest and compensation for losses are usually settled and regulated by the treaties of alliance.

SECT. 6.

Of the Rights of Auxiliaries.

IN a war in which one ally does no more than furnish the other with a number of troops, the former takes the name of *auxiliary*, and the latter that of *principal*, in the war. Auxiliary troops, though most commonly paid by the auxiliary power, are generally at the entire disposition of the principal*. The auxiliary has no right to any share in the booty or conquests, and the principal has the sole right of making peace, provided the auxiliary be included in it.

It must be observed, after all, that the rights of both the principal and auxiliary powers depend †, in great part, on the treaties of alliance between them,

SECT. 7.

Of subsidiary Troops.

SUBSIDIARY troops are those sent by one power to the aid of another, in consequence of a treaty of subsidy made between them. Such troops, unless the treaty contains restrictions to the contrary, are entirely
at

* Unless the aid of such troops has been promised with certain restrictions. See, for instance, *Allgemeine Geschichte der vereinigten Niederlande*, v. 8. p. 300.

† See, for instance, the alliance between Russia and Austria, 1746. art. 10.

at the command of him to whose aid they are sent*; nor can he to whom they belong claim any share in the booty † or conquests, or any right to interfere in the negotiations for peace ‡.

SECT. 8.

General Observations with respect to Allies.

GENERALLY speaking, he who gives the aid may require of him who receives it, to aid him in his turn, if he should be in danger in consequence of having given it: but a compensation for losses is never made between allies who carry on the war in common.

An ally, of whatever description, ought to commit no violence against his ally, and ought, at least, to observe towards him the same friendly conduct that his duty requires him to observe towards a neutral power.

SECT.

* See the treaty of subsidy between the United Provinces and the Elector of Cologne, renewed 1784. See *Hamburg Correspondence*, 1784. n. 144.

† MOSER, *Versuch*, v. 10. p. 1. p. 139.

‡ MOSER, *Versuch*, v. 10. p. 1. p. 147.

SECT. 9.

Of the Rights of a belligerent Power with respect to the Allies of the Enemy.

STRICTLY speaking, a belligerent power has a right to treat as his enemies all the powers who lend assistance to the enemy, from whatever motive or in consequence of whatever treaty. However, policy has induced the powers of Europe to depart from this rigorous principle. They now admit, 1. that a sovereign who furnishes troops in virtue of a treaty of subsidy, does not thereby become the enemy of the power against which those troops act; 2. that, as long as a sovereign sends to the assistance of his ally no more than the number of troops, &c. stipulated for in the treaty of alliance, and does not authorize them to serve upon any other footing than the one specified in the treaty, such sovereign ought to be looked upon as an auxiliary, and not as the enemy of the power against which his troops make war*; and of course, that such sovereign ought to be permitted to enjoy his rights of neutrality.

* See the opinion of the minister of the Elector of Saxony relative to the 4th art. of the alliance of 1746, between Austria and Russia. MOSER, *Versuch*, v. 8. p. 180. compared to the COUNT DE HERTZBERG, *recueil*, p. 8. G. FR. DE BEULWITZ, *de auxiliis hosti præstitis more gentium hodierno hostem non efficientibus*, Halæ, 1417, 4.

lity. This is more especially the case when the aid of an auxiliary is the consequence of a treaty of *general defensive alliance, concluded before the beginning of the war.*

We have seen some powers claiming the rights of neutrality even while they were furnishing the greatest part of their troops, and contributing principally to the resisting of the enemy and the continuation of the war; but imperious circumstances and motives of policy only can induce the enemy to treat such powers as neuter*.

When two powers become allies in form by carrying on the war in common, and with all their forces, without doubt they may and ought to be treated as enemies by the adverse party.

CHAP.

* Accordingly we find instances of such powers being treated as neuter, and others of their being treated as enemies. See Mosza, *Versuch*, v. 10. p. 1. p. 145, and the following. See also, *La liberté de la navigation et du commerce*, in the introduction, § 18.

CHAP. VI.

OF NEUTRALITY.

SECT. 1.

Of the Right of remaining Neuter.

A STATE, not engaged to either of the belligerent powers by a treaty of alliance, or bound to them by the ties of vassalage, association*, &c. is under no perfect obligation to take a part in the war†. Provided, then, such state observes what is required of it by a strict neutrality‡, it has a right to insist upon being treated as neutral by the powers at war; and, consequently,

* Reichsgesetzmässige Erörterung der Frage: ob und in welchen Fällen die Neutralität der Stände und Cräise der heil. röm. Reichs statt hat, v. Deutsche Kriegscanzley, 1762, v. 2. n. 38.

† See, however, GALLIANI, *dei doveri dei principi neutrali verso i guerreggianti*, &c. 1782, chap. 3.

‡ See, on this important subject, HOBNER, *de la saisie des bâtimens neutres*, v. 1, 2, 8. *Abhandlung von der Neutralität in Kriegszeiten*, 1758. 4. GALLIANI, *dei doveri dei principi guerreggianti*, &c. 1782. 4. A. HENNING, *Abhandlung über die Neutralität und ihre Rechts besonders bey einem Seekriege*. See his *Sammlung der Staatschriften die während des Seekrieges, 1775, 1788, öffentlich bekannt gemacht worden*, v. 1.

quently, those powers ought to desist from all violence towards it *, except such as absolute necessity may authorize.

SECT 2.

Of the Obligations of Neutrality.

To observe an *entire* neutrality, a state must, 1. abstain from all participation in warlike expeditions †. 2. It must grant or refuse nothing to one of the belligerent powers, which may be useful or necessary to such power in prosecuting the war, without granting or refusing it to the adverse party; or, at least, it must not establish an inequality in order to favour one of the parties more than the other.

The moment a neutral power deviates from these rules, its neutrality is no longer entire but *limited*: and, indeed, though neutral states sometimes promise more, and enter into a sort of *conventional* neutrality, a limited neutrality is all that the laws of neutrality impose.

SECT.

* When a simple personal connexion exists between two states, subject to the same sovereign, a war with one of them does not, in the theory, hinder the other from claiming the treatment due to a neutral state, provided it observes the laws of neutrality. This is a consequence of the principle, that war is carried on between states and not between sovereigns. In the practice, however, this neutrality is seldom respected. See GALLIANI, l. c. § 2. p. 5.

† HUBNER, *de la saisie des bâtimens neutres*, v. 1. p. 1. c. 2. § 1.

SECT. 3.

Of abstaining from warlike Expeditions.

A SOVEREIGN, who lends assistance to one of the belligerent powers, either in troops or money *, cannot, in rigour, claim the treatment due to a neutral power, though, in the cases mentioned in book 8, chap. 5. sect. 9, it is customary to treat him as such, in imputing to him an *imperfect* or *limited* neutrality.

SECT. 4.

Of granting and refusing with Impartiality.

EVERY sovereign has a right, in time of peace, to grant or refuse to another power the liberty of raising troops in his territory, of marching a body of troops into or through his territory; and may grant to one power what he refuses to another. In time of war he may do the same. He has a right to grant or refuse to the belligerent powers, and observe the same in-

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equality

* A question of importance presents itself here: to wit, Does a state transgress the laws of neutrality in permitting its subjects to accept of letters of marque from one of the belligerent powers, and to fit out privateers, in order to cruize against the other belligerent power? — In rigour, such permission appears to be a transgression of the laws of neutrality. — Treaties of commerce have often an article by which the contracting parties stipulate not to grant such permission.

equality towards them, as he did in time of peace, without thereby deviating from the sentiments of impartiality that ought to be entertained by every neutral power.

SECT 5.

Of granting and refusing with Impartiality, according to modern Practice.

IN the practice, 1. it is generally admitted, that it is no more lawful in time of war than in time of peace, to enter with an armed force into a neutral territory, without previous permission *; but necessity is sometimes pleaded in justification of a transgression of this rule †. 2. Every inequality, observed by a neutral power towards the belligerent powers, is looked upon as being, in fact, contrary to the laws of neutrality; and either of the belligerent powers looks upon itself as having a right to take by force what a neutral power refuses to grant it, if the neutral power grants it to the other belligerent power. 3. An equality, real or apparent, observed by a neutral power, does not always satisfy the belligerent powers. One of these sometimes hinders by force the enemy from obtaining from a neutral power, what, if granted to both, would be more useful to the enemy than itself. So also, one
of

* MOSER, *Versuch*, v. 10. p. 1. p. 245, and the following. On the liberty of entry for ships of war, see above, book 3, chap. 3. sect. 2.

† MOSER, *Versuch*, v. 10. p. 1. p. 218, and the following.

of the belligerent powers procures, by force, what, if refused to both, would be more disadvantageous to it than to the enemy. In both these cases, an unreal impartiality is alleged, or else the law of necessity.

SECT. 6.

Of the Rights of Neutrality with respect to Territory.

HOSTILITIES begun or continued in neutral territory, must violate the rights of sovereignty of the neutral power, and, therefore, the law of nature forbids the belligerent powers to begin or continue hostilities * in the territory, or on the parts of the sea, under the dominion of a neutral power.

This point is, too, acknowledged by the customs and general practice of the nations of Europe, and is often confirmed by treaty †. Nothing is more common than stipulations not to commit or suffer hostilities in a neutral territory ‡. And, though there are but

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too

* D'ABREU, *traités sur les prises maritimes*, p. 1. c. 3. § 14. BOUCHAUD, *théorie*, p. 283. BYNKERSHOEK, *Quæst. jur. publ.* l. 1. c. 8.

† HUBNER, *de la saisie*, &c. v. 2. p. 2. p. 169. and the following. D'ABREU, p. 1. c. 5. § 10, and the following.

‡ For this reason, when two vessels, the enemies of each other, meet in a neutral port, or when one pursues the other into such port, not only must they refrain from all hostilities while they remain there, but, should one set sail, the other must not set sail in less than twenty-four hours afterwards. MOSER, *Grundlehren*, chap. 31. § 25. p. 269. *litum, Versuch*, v. 10. p. 1. p. 159. 311.

too many examples of violations of this kind *, yet we cannot look on them as amounting to a custom or usage, since they always produce complaints, and since necessity alone can be pleaded in their justification.

It cannot, then, be lawful to take the property of an enemy in the territory of a neutral power; and, of course, the booty that a captor brings or sends into a neutral territory, cannot, on that account, be claimed by the original proprietor. The captor may even sell such booty in a neutral territory, if it has not been otherwise settled by treaty †.

SECT. 7.

Neutral Property exempt from Hostilities.

THE property of a neutral power, whether moveable or immoveable, found in the territory of an enemy, ought to be exempt from hostilities; the belligerent powers have no right whatever to touch it. Accordingly, this rule is observed as much as the troubles and confusion of war will permit.

It is doubtful if the law of nations authorizes a sovereign, except in cases of extreme necessity, to lay an embargo ‡ on the neutral vessels that happen to be in

* DE REAL, v. 5. p. 529. 30.

† BYNKERSHOEK, *Quæst. jur. publ.* l. 1. c. 15.

‡ J. F. RHETI, *dis. de jurisdictione ac vectigalibus portuum et de jure quod in quæ volunt arcendi et angariarum ravibus imperandi*. Frank, on the order

in his ports at the breaking out of a war, and to seize on them in order to employ them in the services of his fleet, in paying them for their services*. Custom has introduced the exercise of this right, but it has been abolished by a great number of treaties†.

SECT. 3.

Of neutral Commerce according to the universal Law of Nations.

ONE of the most important points to be considered in treating of the laws of neutrality, is, the commerce carried on between neutral and belligerent nations‡.

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The

order of 1761. 4. and in his *dissertations*, p. 467, J. SCHULZE, *diss. de jure Angariorum. Vom Beschlag der Schiffe*. Dantzig, 1686. 4.

* DE REAL, *science du gouvernement*, n. 3. c. 2. p. 536, and the following.

† See the treaty of the Pyrenees, 1659, art. 9; the treaty between Spain and Austria, 1725, art. 25; between Denmark and France, 1749, art. 30, 31; between Denmark and Genoa, 1756, art. 28, 29; between France and Holland, 1739; between Russia, and England, 1784, 1766.

‡ On this subject the reader may see, besides the writings mentioned in the notes under the first sect. of this chapter, *Observations du droit de la nature et des gens, touchant la capture et la détention des vaisseaux et effets neutres en temps de guerre; tirées du nouveau droit controversé Latin de FREDERIC BEHMER*, Hamb. 1771. *La liberté de la navigation et du commerce des nations neutres pendant la guerre*. Lond. and Amst. 1780. *Essai sur un code maritime général Européen*. Leipz. 1782. Both these essays have been translated into German at Leipz. 1780 and 1782. 8. A. W. B. DE UCHTRIZ, *von Durchsuchung der Schiffe neutraler Völkerschaften*. Rothernburg, 1781. 8. PESTEL, *specimen juris gentium*. Ladg. B. 1785. 4.

The right that a nation enjoys, in time of peace, of selling and carrying all sorts of merchandize to every nation that chooses to trade with it, it enjoys also in time of war, provided that it remains neuter. It follows, then, that a neutral nation may permit its subjects to carry all sorts of merchandize, including arms and ammunition, to the powers at war, or to that of them with which this commerce may be carried on to the greatest advantage. So long as the state, that is the sovereign power, in a neutral nation, does not interfere, by prohibiting commerce with either or all the powers at war, so long, it would seem, the nation does not transgress the laws of neutrality. However, a power at war having a right to hinder its enemy from reinforcing itself by the reception of warlike stores, necessity may authorize it to prevent merchandize of this kind from being conveyed to the enemy by a neutral power; but in all such cases, the captor ought to content himself with sequestering such merchandizes till the end of the war; or, if he applies them to his own use, he ought to pay the full value to the neutral proprietor. The right of confiscating such merchandizes or the vessel on board of which they are found, seems not to belong to a belligerent power*, except when the

* The pretext, sometimes made use of, of confiscating such merchandizes belonging to neutral subjects, in order to prevent them from carrying on such a commerce, does not seem sufficient to justify the punishment of those who do not offend us; nor do the laws of necessity seem to extend so far.

the neutral power from whom they are captured, has violated the laws of neutrality, or when this confiscation is made in a place under the dominion of the sovereign who makes it.

SECT. 9.

Entire Prohibition of Commerce.

IN consequence of the last principle laid down in the preceding section, and of the rights of sovereignty in general, every sovereign engaged in a war, may prohibit all commerce whatever with the enemy; 1. in his own territory and maritime dominion; 2. in the places, provinces, &c. taken from the enemy; 3. in such places as he is able to keep so blocked up as to prevent every foreigner from entering. In all these cases, he may attach penalties to the transgression of his prohibitions; and these penalties may extend to the confiscation of goods or vessel, or to the corporal punishment of those who assist in the carrying on of such prohibited commerce.

SECT. 10.

Of an Enemy's Goods found in a neutral Vessel.

IT is undoubtedly lawful for a belligerent power to confiscate the goods and vessels of an enemy; but, since a belligerent power cannot exercise hostilities in a neutral place, nor confiscate property belonging to neutral subjects,

subjects, such power ought not to confiscate the goods of an enemy found in a neutral vessel *, navigating on a free or neutral sea, nor neutral goods found in the vessel of an enemy : provided, however, in both cases, that these goods are not warlike stores.

If a belligerent power ought not to confiscate the goods of an enemy found in a neutral vessel, it is evident that the vessel ought not to be confiscated ; but a belligerent power has a right, even on a free sea, to bring a neutral vessel to, and insist upon a proof of her neutrality ; and with respect to neutral goods on board of an enemy, the captor has a right to insist on a clear proof of their neutrality. This proof given, the vessel ought to be released in the first case, and the cargo in the latter.

SECT. 11.

Of Judgments concerning Prizes.

IN the case of a dispute concerning the lawfulness of a prize made on a free sea, since neither the sovereign of the captor nor the sovereign of the proprietor has, according to the natural law, an exclusive right of judging in the cause, it should be decided between

* GROTIUS, l. 3. c. 6. § 26. n. 3. is of a contrary opinion, which was supported by the practice of his time. See JENKINSON, *Discourse on the conduct of Great-Britain in respect to neutral nations*, in his supplement to the collection of treaties, 1781, 8. p. 101.

tween the two nations in an amicable manner; if judicially, judges of both nations ought to be admitted *.

SECT. 12.

Principles of the modern Law of Nations with respect to neutral Commerce.

THE modern law of nations † differs in many points, touching neutral commerce, from the universal law of nations.

It is generally acknowledged that a neutral power, ought not to transport to either of the belligerent powers merchandizes unequivocally intended for warlike purposes ‡. The list of these merchandizes, commonly called *contraband*, has been differently composed in different treaties of commerce. Sometimes this list has

* For instance, when the cause is tried in the court of admiralty of the sovereign of the captor, the consul of the nation from the subjects of which the prize has been made ought to be admitted. See HUBNER, l. c. v. 2. p. 1. chap. 2. § 2.

† We find even among the ancients, prohibitions concerning arms carried to an enemy. L. 1. l. 2. D. *quæ res exportari non debeant*, l. un. C. *de litoris et itinerum custodias*. Many Popes, as Alexander III. c. 6. 12. 17. X. *de Judeis Saracenis*. Innocent III. Clement V. Nicholas V. Calixtus III. forbade the christians, under pain of the ban and confiscation, to carry arms to the infidels. See *die Freiheit der Seiffahrt*, § 66, GALLIANI, l. 1. introduc. p. 4. n. 1. See also the prohibition contained in the recess of the Hans-Towns, of 1417. MARPERGER, *neueröffnetes Handelsgericht*. p. 175. These examples are a ground for insisting on the same from foreign and neutral powers.

‡ Such as arms, vessels of war, &c.

has been swelled out with merchandizes, which are not evidently and unequivocally intended for the purposes of war, though they may be useful to the enemy * ; and, at other times, such merchandizes have been expressly declared not contraband. This last ought to be presumed also between powers that have no treaty with each other.

Besides this, the maritime powers have begun, especially since the latter end of the last century †, to issue declarations at the beginning of a war, to advertise the neutral powers that they shall look upon such and such merchandises as contraband, and to forewarn them of the penalties they intend to inflict on those who shall be found conveying them to the enemy. These declarations are rather advertisements than laws ; nor can their effects be by any means extended to those neutral powers, with which the powers that issue them have treaties of commerce, in which this matter is settled.

SECT. 13.

Of Penalties attached to contraband Commerce.

A NATION that authorizes contraband commerce is looked upon as having violated its obligations of neutrality ;

* Such as ship timber, cables, hemp, coined money, corn, spirituous liquors, tobacco, provisions, &c.

† Louis XIV. set the example, 1681. See HENNINGO, *Abhandlung über die Neutralität*, p. 30. See another declaration, 1744, in BOUCHAUD *théorie*, p. 397.

trality ; and the belligerent power against which such commerce operates, confiscates the contraband merchandize, and sometimes the vessel too. It seems to have been the rule formerly to confiscate both *, when the proprietor of the vessel had knowingly and voluntarily loaded his vessel with contraband merchandize, whether in whole or in part. At present, this custom is almost entirely abolished by treaties of commerce ; or, at most, it is admitted in particular cases only †. Where there are no treaties ‡ the conduct of the belligerent powers is extremely variant ||.

SECT.

* BOUCHAUD, *théorie*, chap. 12. p. 334. 343. 352, looks on this as a general rule even at present.

† For instance, it was agreed between France and the United Provinces, 1646, and between France and England, 1655, that the vessel should be confiscated only when there were soldiers on board, destined to join the enemy.

‡ For the question, whether it be lawful or not to confiscate the whole cargo, when only part of it is contraband ? see BOUCHAUD, *théorie*, p. 352.

|| The King of Prussia, in his treaty with the United States of America, 1785, art. 13. has given the first example of an agreement, importing, that, when a vessel is laden with contraband merchandize, neither the vessel nor cargo shall be confiscated ; but that the captor shall be permitted to retain the cargo only, to prevent its reaching the enemy.— On the subject of contraband, see an excellent treatise, published in 1801, by Robert Ward, Esq.

SECT. 14.

Of the Liberty of neutral Commerce, as acknowledged by the Powers of Europe.

WITH respect to merchandizes which are not contraband, it is generally acknowledged by the powers of Europe, that neutral powers have a right to transport them to the enemy*; except it be into places blockaded †, with which all commerce is prohibited. However, neutral merchant vessels ought, when out at sea, to submit to the customary examination, which has been almost uniformly confirmed by treaties of commerce made between the different powers ‡.

SECT.

* Some powers have, but in vain, attempted to forbid neutral nations to carry on commerce with their enemies: for instance, the Dutch, in 1666. See JENKINSON, *discourse*, p. 115. England and Holland, in 1689. See BOUCHAUD, p. 252. 341.

† PESTEL, *specim. jur. marit.* § 11. See also sect. 18. of this chapter.

‡ On the manner of examining a vessel, see HUBNER, v. 2. p. 2. chap. 4.; and UCHTRIZ, *von Durchsuchung der Schiffe neutraler Völker. schaften*. A merchant vessel refusing to be examined, may be forced to it, and if such vessel defends herself against a ship of war, she incurs the penalty of confiscation. See PESTEL, *specim. jur. marit.* § 13. *Traité des prises maritimes*, chap. 4. sect. 1. n. 2. p. 38.

SECT. 15.

Of the Condemnation of captured Vessels.

WHEN a prize has been made, the captor cannot appropriate it to his own use, till it has been condemned as a lawful prize in a court of admiralty.

The customary, as well as conventional law, authorizes every sovereign in Europe to institute courts of admiralty, and other superior tribunal, vested with full power to determine on the legality or illegality of all prizes made by his subjects *.

In trials of this kind, the original proprietors of the prize, or those who claim in their stead, are required to prove that the prize is not a lawful one †. In other respects, it is not the laws of the country where the court is held, but existing treaties, and the universal

* See, however, *Exposé des motifs qui ont engagé le Roi de Prusse*, &c. mentioned book 3. chap. 3. sect. 16.

† The universal law of nations seems to require the captor to prove the legality of the prize, but custom obliges the claimant to prove the illegality of it. Great-Britain has even established as a principle, that if a neutral vessel does not produce to the captor, when met at sea, a sufficient proof of her neutrality, she shall be obliged to pay all costs of suit. France would not admit, during the last war, any other proof but such as was on board at the time of the first examination by the captor. See *Règlement concernant la navigation des bâtimens neutres du 26 Juillet, 1778. Code des prises*, v. 2. p. 673. See in general, *La liberté de la navigation et du commerce des puissances neutres*, § 114.

universal law of nations, that ought to be the basis on which all decisions of this sort are founded *.

SECT. 16.

Of an Enemy's Goods on Board a neutral Vessel.

THE nations of Europe have not always acted on the same principle, with respect to an enemy's goods found in neutral vessels. It was formerly † a rule, almost generally adopted by them, to return to the proprietors the neutral goods taken on board of an enemy's vessel, and to confiscate the goods of an enemy found on board of a neutral vessel. But the disputes arising from the observance of this rule, and the very great inconvenience it brought on the commerce of neutral nations, gave rise to an entirely new principle. According to this principle, regard is had to the property of the vessel, and not of the goods: so that a neutral vessel saves the goods of an enemy, and neutral goods found on board of an enemy are confiscated, (*Frey Schiff Frey Gut, verfallen Schiff, verfallen Gut*).

This

* See the Duke of Newcastle's answer to Mr. Mitchel, p. 39. and the declaration of England to Russia, 1780. DOWD, *Materialism*, l. 4. p. 189. See also Sir William Scott's Decisions.

† *Consolato del mare*, chap. 273. See the treaties of the 14th, 15th, and 16th centuries, in *La liberté de la navigation et du commerce*, § 93, and the following, § 109; and JENKINSON, *discourse on the conduct of the British government*, p. 110. and the following.

This principle has been adopted in almost all the treaties of commerce made since the middle of the seventeenth century *, and has been observed even by the greatest part of powers having no treaties with each other. Yet, in some treaties of commerce, the ancient principle † has been adhered to, and, in others, a different rule has been established ‡.

SECT. 17.

Origin of the System of armed Neutrality.

DURING the latter wars of the present century, the neutral powers complained that the belligerent powers,

* For instance, in the treaty of 1646, between France and the United Provinces, and in a great number of other treaties. See *La liberté de la navigation*, &c. § 97, 100, and the following. HUBNER, *de la saisie*, &c. v. 2. p. 2. chap. 3. See also the treaty between France and the United Provinces, of 1785, art. 8. It is worth notice, that Great-Britain herself has admitted this principle in her treaties with France of 1667 and 1713, art. 17; in the treaty of 1786, art. 20; in her treaty with Spain of 1667, art. 21, 22; in that of 1670 and 1713, with the same power; and in her treaty with the United Provinces of 1688, art. 16; in that of 1674, art. 8, and in that of 1678.

† Treaty between Great-Britain and Sweden, 1661, art. 13; between Great-Britain and Denmark, 1670, art. 20. In the treaties between Great-Britain and Russia, 1734, 1766, this point is not clearly expressed.

‡ Treaty of commerce between France and the Hans Towns, 1655, 1716.

powers *, and Great-Britain † in particular, had encroached on their rights of neutrality, either in swelling out beyond just bounds the list of contraband merchandizes, or in giving the notion of a blockaded place a too extensive construction ; or in vexatious examinations of their vessels, and, particularly, in deviating from the principle, established by the custom and treaties of the seventeenth century, according to which neutral vessels save neutral goods. In consequence of these alleged encroachments, the Empress of Russia drew up, in 1780 ‡, at which time she was among the neutral powers, certain principles relative to neutral commerce, which she communicated to the belligerent powers, accompanied with a declaration that she would maintain them by force of arms ||. Hence the system of *armed neutrality*.

SECT.

* See an abridgement of the history of the dispute on this subject in BUSCH, *Grundriss der neuesten Welthandel*, p. 421. On what happened in the war of 1753, see *teutsche Kriegsanzeley*, v. 10.

† The conduct of Great-Britain towards neutral powers is defended by JENKINSON, *discourse on the conduct of Great-Britain*, &c. p. 101.

‡ See the first declaration of Russia, in DHOM, *Materialien*, l. 4, p. 177. HENNINGS, v. 2. p. 408.

|| The public acts which have appeared on this subject are collected in DHOM, *Materialien*, 4te Lieferung ; and in HENNINGS, *Sammlung der Staatschriften*, &c. v. 2.

SECT. 18.

Of the System of armed Neutrality.

THE principles of the system of armed neutrality are, 1. that neutral powers have a right to enjoy a free trade with the ports and roads of the belligerent powers; 2. that neutral vessels make neutral goods, that is, enemy's goods found in neutral vessels ought not to be confiscated; 3. that no merchandizes shall be reputed contraband which have not been declared so in treaties made with the belligerent powers, or one of them; 4. that a place shall not be looked upon as blockaded, except when surrounded by the enemy's vessels in such a manner as renders all entrance manifestly dangerous; and, 5. that these principles shall serve as the basis of all decisions touching the legality of prizes.

SECT. 19.

Of the Accession of the maritime Powers. &c.

ALMOST all the powers that remained neutral at the time when this system was formed, successively ceded to it*; and, among the belligerent powers,

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France

* Denmark acceded by a convention with Russia, 1 June, 1790.

Sweden, 21 July, 1790. The United Provinces, 24 Dec. 1780. Prussia, 1 Aug. 5 Jan. 1781.

3 May

France and Spain did not oppose it*. Great-Britain has not adopted it even to this day, but she found herself obliged, from the concurrence of so many nations to respect its principles.

If this system was adopted in 1780, for the then present war only, the declarations of the parties sufficiently prove, that their intention † was, that it should serve as a basis for a like system in future wars; and experience has already, in part, confirmed the expectation.

The list of contraband merchandizes ‡ must necessarily

* May, 1781. The Emperor, 9 Oct. 1781. Portugal, 13 July, 1782. The King of Naples, 1783.

* See the answers of France and Spain to the declaration of Russia, *Duom*, l. c. p. 191. 193.

† See the memorial of the Russian court to that of the United Provinces, and to different other courts, *Duom*, book 4. p. 180. See also, *Acte pour le maintien de la liberté du commerce, &c. entre Sa Majesté Impériale de toutes les Russies et Sa Majesté le Roi de Prusse*. *Duom*, l. c.

‡ Russia adopted the list of contraband merchandizes contained in art. 10. 11. of her treaty, with Great-Britain of 1766, which she applied to France and Spain also. Denmark adopted, with respect to Great-Britain, the treaty of 1670, art. 3. and, with respect to France and Spain, the treaty with France of 1670, art. 27. Sweden adopted with respect to Great-Britain, the treaty of 1661, art. 11. and, with respect to France and Spain, the treaty with France of 1741. The United Provinces adopted, with respect to Spain, the treaty of 1674, art. 3. with respect to France the treaty of 1730, art. 6. Prussia having no treaty on this point with the belligerent Powers, adopted the principle of the treaty between Great-Britain and Russia of 1766, art. 20. 11.

cessarily vary, as long as the treaties of commerce vary in that respect*.

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CHAP.

* On the long and warmly-disputed subject of *neutral rights*, see,
 1. A Collection of public Acts and Papers, relating to the Principles of armed Neutrality. London, 1801. 2. Lord Liverpool's Treatise on the Conduct of Great-Britain with respect to neutral Nations. London, 1801. 3. A Treatise of the relative Rights and Duties of belligerent and neutral Powers, in maritime Affairs, by Robert Ward Esq.; and a Treatise on Contraband, by the same author. London, 1801. 4. A Treatise upon the Visitation of neutral Vessels under Convoy, &c. &c. by J. F. W. Schlegel, Doctor and Professor of Law in the University of Copenhagen. London, 1801. 5. Report of the Judgment on the Swedish Convoy, pronounced by Sir Wm. Scott. London, 1799. 6. Remarks on Mr. Schlegel's Work, upon the Visitation of neutral Vessels under Convoy, by Alexander Croke, Esq. L.L.D. London, 1801. 7. Letters of Sulpicius on the Northern Confederacy; with an Appendix, containing the Treaty of armed Neutrality, together with other Documents relative to the Subject, London, 1801. 8. A Vindication of the Convention concluded between Great-Britain and Russia. London, 1801. 9. Substance of the Speech of the Right Hon. Lord Grenville, in the House of Lords, November 13; 1801, on the Motion for an Address, approving of the Convention with Russia; with an Appendix containing a comparative View of the Treaty of armed Neutrality, the Northern Confederacy of 1800, and the Convention with Russia. London, 1802.

CHAP. VII.

OF MAKING PEACE,

SECT. I.

Of the first Overtures for Peace.

THE enemy ought, strictly speaking, to put an end to the war as soon as he has obtained, or can obtain, the satisfaction demanded, a compensation for the expenses of the war, and security for the future. But it is policy that usually determines the duration of a war. Sometimes the demanded satisfaction is never obtained, and at others, the war is carried on for vengeance or conquest's sake, after the satisfaction is, or may be obtained.

The first overtures for peace are sometimes made by one of the belligerent powers, and sometimes by a neutral power, their common friend. The negotiations also are sometimes opened by the belligerent powers themselves, and sometimes by a neutral power that interposes its good offices, or becomes mediator.

tor*. These negotiations are carried on at the court of one of the belligerent powers, or at that of a mediator, or else at some other place, named by the parties as the place of assembly for the congress†.

SECT. 2.

Of preliminary Conventions.

SOMETIMES one of the belligerent powers forms a claim, with respect to which it demands a positive satisfaction, before it will listen to the propositions of peace‡. This may give rise to a sort of *preliminary conventions*.

2 4

SECT.

* The mere interposition of good offices differs from mediation. The latter supposes the consent of the two parties, and this only can give a right of assisting at the conferences. The good offices of a neutral power may, then, be accepted, and its mediation refused, as did Russia with respect to France in the war with Sweden, 1742. See, in General BIELLEFELD, *Institutions politiques*, v. 2. chap. 8. § 17. TREUER, *de prudentia circa officium pacificationis inter gentes*. Nor must the mediator be confounded with the arbitrator.

† See TREVAUX's Dictionary, under the word *Congress*.

‡ Such was the claim of Great-Britain with respect to the renunciation of Philip V. of the crown of France, and with respect to Assiento, before the treaty of Utrecht, 1713.

SECT. 3.

Of Congresses.

BEFORE a congress be assembled, the belligerent powers make arrangements with respect to the time and place of assembling*, the powers that are to be admitted to assist at it, the neutrality of the place and its environs, the security of the ministers and their messengers, the ceremonial to be observed at the congress, &c. These sometimes occasion a second sort of *preliminary conventions*†, and even preliminary congresses.

It is now the custom, in order to avoid disputes with respect to the ceremonial, to give the ministers who are sent to the congresses, the title of plenipotentiary only, and not that of ambassador. These ministers interchange their full powers, or else they put them into the hands of the mediator.

The conferences are carried on by the ministers alone, or with the participation of the mediator. Sometimes they are held in a public building, sometimes in the

* A congress may be held on the enemy's territory or on that of a neutral power. The first was rarely allowed formerly, and even now, powers seldom like to negotiate for peace on their enemy's territory, though motives of policy sometimes induce them to do it, and though they are less scrupulous on this point than formerly.

† See those of 1748. ADELUNG, *Staatsgeschichte*, v. 6. p. 327, and the following.

the dwelling of the mediator, and sometimes at that of the ministers alternately; on which occasions the precedence is yielded to the mediator.

These conferences are continued, either verbally or in writing, till the treaty is finished*, or till, after useless attempts to come to an agreement, the congress is dissolved†,

SECT. 4.

Of Negotiations at the Courts of the belligerent Powers.

WHEN a treaty is to be negotiated by the belligerent courts, as the negotiations could hardly ever be brought to a close in writing‡, both parties have recourse to ministers plenipotentiary; who, in such case, ought, 1. to be sent by the two courts at the same time; 2. to be furnished with full powers; 3. to carry with

* 1743. 1748. 1762.

† 1721. 1720. 1747. 1761. 1762. 1772. 1773.

‡ The negotiations between France and England, in 1761, was opened in writing, but the parties were soon obliged to have recourse to plenipotentiaries. See *Mémoires historiques sur la Négotiation de la France et de l'Angleterre depuis le 26 Mars, jusqu'au 20 Sep. 1761*. Modern history furnishes but one example of a peace concluded by two letters; that was the peace of 1729, between Poland and Sweden. But, in that instance, there were no difficulties to do away. See DE STECK, *Essai sur diverses sujets de politique, essai 2*. MONTGOM, *mémoires*, v. 7. *supplément*. MODÈS, *Ultrag*, etc. 1729.

with them letters of credence addressed to the secretary of state (as they do not commonly obtain an audience); 4. to be furnished with passports by the enemy. When their quality and character are authenticated, they enter into conferences with the secretary of state, or with the mediator if there be one, and continue them till the peace is concluded, or till they are recalled or sent away.

SECT. 5.

Of preliminary Treaties of Peace.

WHEN the negotiators have come to an agreement on the points which are to serve as the basis of a treaty of peace, and there remain certain difficulties to be done away, which are not of importance enough to induce the parties to continue or renew the war, preliminary treaties are generally formed. These treaties differ as to their form; sometimes they are mere minutes, and sometimes they have all the clauses usually found in formal treaties. In general, when signed and ratified, they are obligatory, even before the definitive treaty is concluded, and remain so if the definitive treaty should not be concluded, unless it has been otherwise agreed on.

When the preliminary treaty is concluded, the parties continue to negotiate on the points that remain unsettled, in order to conclude and ratify the definitive treaty.

SECT.

SECT. 6.

Of definitive Treaties of Peace.

IN a treaty of peace we may distinguish the general articles, which bear a strong resemblance to each other in all treaties of peace, from the particular articles, which, being proper to the treaties in which they are inserted, are not susceptible of comparison.

After the introduction, usually follow the general articles, respecting the re-establishment of peace * and friendship, the cessation of hostilities and contributions †, the exchange or release of prisoners of war, and the general amnesty ‡.

Then follow the principal particular articles, which, after having specified and renewed the treaties that are to serve as the basis of the peace, treat of the matters concerning the decision of the dispute which
occasioned

* MOSER, *Tessener Friedensschluss mit Anmerkungen*, p. 94, and the following.

† Sometimes, particularly in maritime wars, the distant situation of the seat of war induces the parties to name different epochs for the cessation of hostilities; in this case, hostilities are to cease, at such a place, at such a time, unless the news of peace arrives sooner. This proviso ought always to be understood, but there has often been disputes on the subject.

‡ DE STECK, *de amnestia*; see his *observationes*, n. 13. WESTPHAL, *Abhandlung*. See his *von der Amnestie; deutsches Staatsrecht*, Halle, 1748. 8. Abb. 2. MOSER, *Versuch*, v. 10. p. 2. c. 11. p. 323.

occasioned the war*, and particularly of what concerns the possessions, whether there are concessions or compensations to be made, or whether the *uti possidetis* is agreed on.

The treaty concludes with specifying the time when, and sometimes the place where, the ratifications are to be exchanged.

SECT. 7.

Of separate Articles.

ARTICLES are sometimes added to a treaty of peace which are called *separate*. They are of two sorts; the first contains principal points relative to the treaty and its execution, and are sometimes secret and sometimes public. The second are general, and of the nature of a *salvo*: such are the articles concerning the titles and the language made use of in the treaty. It is agreed in such articles, with respect to titles, that those made use of in the treaty not being acknowledged by all, their use on this occasion shall not establish a custom, or have any influence on the future; and, with respect to the language, that the language made use of in the treaty is a matter of choice
or

* The disputes which have been the occasion of the war ought always to be decided; but they often remain, at least in part, undecided, while other differences are settled which have had no part in exciting the war. MOSER, *Vorricht*, v. 10. p. 2. p. 364.

or convenience, and not the effect of obligation, and that, therefore, its use on this occasion establishes no custom or right. The Latin language, which was formerly made use of by nations of different languages, has generally yielded to the French, which is now made use of by most of the powers of Europe, as well in the conferences as in the treaty itself*; but nations of different languages do not acknowledge the obligation of making use of it.

SECT. 8.

Of the Signature of Treaties.

WITH respect to the signature of treaties, 1. the parties endeavour to avoid as much as possible, the disputes which too often arise on the subject. When the point of precedence is not decided, they generally adopt

* On the use of languages in general, see book 6. sect. 4. in the second note. It is since the peace of Nimeguen that the French language is become so general among the foreign powers, in their conferences and treaties. See *le Comte de RIVAROL, dissertation sur l'universalité de la langue Française*, Berlin, 1784. p. 33. The Princes of Germany began to make use of French in their treaties with each other at the peace of Breslaw, 1742. C. MOSER, *Teichner Friedensschluss mit Anmerkungen*, p. 48. and the following. Mr. DE REAL relates (v. 5. c. 3. p. 558.) that the Turks do not regard those treaties as obligatory which are not in their language, and this obliges those who treat with them to draw up their treaties in the two languages.

adopt the alternation*, or else enter their protests or make reservations†. 2. The signature as well as the exchange of ratifications is either without ceremony or solemn; in the latter case the ministers plenipotentiary usually assume the character of ambassadors, whether for the signature or the ratification.

SECT. 9.

Of Powers that are comprehended in, or that accede to, a Treaty of Peace.

BESIDES the principal contracting parties in a treaty of peace, other powers are often mentioned therein as *comprehended*, as *acceding*, or as *guarantees*‡.

Powers *comprehended* in a treaty are, 1. the allies and auxiliaries of the principal contracting parties, or in general all who have taken part in the war, in order that the effects of the peace may be extended to all; 2. sometimes other powers are comprehended or inserted from other motives§.

A power

* See the instance of the peace of Aix-la-Chapelle, *Allgemeine geschichte der vereinigten Niederlande*, v. 8. 441. and the following. MOSER, *Fernach*, v. 10. p. 2. p. 377. and the following. ROUSSET, *recueil*, v. 20. p. 174. and the following.

† DE REAL, v. 5. p. 41.

‡ V. STACK, *von der Einschließung einer dritten Macht in einem Tractate*. See his *Auführungen pol. und rechtl. Mat.* 1776. p. 48. and the following.

§ For instance, Spain, Sicily, and Sardinia, 1739, and Austria, 1748.

A power *accedes* to a treaty by a separate act, accepted by the contracting parties. It accedes as a principal contracting party, with all the rights and obligations of such party, or merely to give its consent when the principal contracting parties have disposed of some one of its rights, with respect to which its consent may appear necessary; or else it accedes as a mark of honour.

SECT. 10.

Of Guarantees.

SOMETIMES foreign powers are called in as guaranties of a treaty*. A guarantee may extend to the treaty in general, or be confined to some particular article or articles of it†; in the first case it is called general, in the latter particular. It may also be for one of the contracting parties only, or for all of them.

In general, a guarantee engages to maintain the
treaty,

* The reciprocal guarantee of the contracting parties is of a different nature. It is evident that, when there are but two contracting parties, such a guarantee can be of no effect with regard to the maintenance of the treaty: when there are a greater number of contracting parties, it may be of some effect. See, however, EHRHARD, *de sponsoribus juris gentium probus*. Lips. 1764, 4.

† NEYRON, *essai sur les garanties*, Gottingen, 1777. 8. DE STRICK, *von der Geistes und Conservatoren der Verträge und dem Ursprung der Garantien*,

treaty, in promising to lend assistance to the party who shall complain of an infraction of it, and who shall demand such assistance.

A guarantee has no right to oppose the alterations that the contracting parties may afterwards make in the treaty by mutual consent; but then, he is not obliged to guaranty the treaty when so altered.

SECT. 11.

Of the Execution of a Treaty.

THE treaty of peace being signed and ratified, it only remains to publish it and put it in execution. The first is generally done with solemnity; the latter very often meets with a great deal of difficulty, particularly when an invaded territory is to be evacuated, or provinces, &c. are to be ceded to a power that is not in possession of them at the time of making the treaty of peace. These difficulties sometimes occasion particular conventions, and even *congresses of execution*: and it is lucky, if by such means the embers of war are entirely extinguished.

BOOK IX.

OF THE MEANS BY WHICH RIGHTS MAY CEASE.

SECT. 1.

Of inherent Rights.

AFTER having spoken of the origin and end of the rights of nations, it remains to examine the means by which those rights may cease.

Nations cannot lose their inherent rights any more than individuals, though a part of them may be given up by convention, and though an injury may authorize their violation.

SECT. 2.

Of Rights acquired by Possession.

RIGHTS acquired by possession cease among nations as among individuals, particularly by voluntary resignation, by cession, or by a total decay of the thing possessed ; but not by prescription.

SECT. 3.

Of Rights acquired by Treaty.

It is by the nature of conventions in general, that we ought to determine the cases, in which rights acquired by valid treaty cease to exist.

Such rights cease when the party who enjoys them fails in his part of the contract, or when the time, specified in the treaty for their ceasing, is expired; unless the treaty be expressly or tacitly renewed.

A total change of circumstances which, at the time of making the treaty, had the force of conditions, renders the contract no longer obligatory, and when the object of the treaty ceases to exist, the treaty ceases also. The obligation must cease, of course, when the treaty has been duly executed.

The mutual will of the contracting parties is always a sufficient mean of terminating an obligation; but one of the parties has not a right to swerve from a treaty, otherwise valid and obligatory, except in the case of collision, or in that of an infraction by the other party.

The violation of one article only of a treaty *, by one party, may, at least successively, give the other a right

* GROTIUS, *jus belli et pacis*, l. 2. chap. 14. § 15. VATTTEL, *droit des gens*, l. 2. chap. 13. § 202. BUDDEUS, *de contraventionibus fœderum*, cap. 3. § 14.

right to violate the whole treaty ; unless this right has been formally renounced *.

If of many treaties between two powers, one should happen to be violated, the others do not, on that account merely, cease to be obligatory ; but since the perfect right of the injured party allows him to violate the perfect rights of the other party, till he has obtained due satisfaction, a power that justly complains of the violation of one treaty may, by way of retaliation, successively transgress another treaty, even so far as to declare forfeited the rights resulting to the other party from such treaty.

SECT. 4.

Of Rights acquired by tacit Convention.

WHAT has been said of the means of terminating the obligations imposed by treaties, may be applied to those imposed by tacit conventions ; because, the manner in which consent has been given can have no influence on the obligations resulting therefrom.

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SECT.

* Sometimes it is expressly agreed, that a violation of one article shall not authorize a violation of the whole treaty. This, however, does not dispense with giving satisfaction for the injury ; and if this satisfaction be refused, it seems to destroy the effect of such agreement.



SECT. 5.

Of Rights founded on Custom.

As to rights founded on simple custom, each power may discontinue them whenever it makes a timely declaration, either express or tacit, of its intention so to do. Such rights may also cease by giving place to others, established by the mutual will of the nations concerned: but this change made by some powers cannot oblige other powers to change their conduct; unless the custom subsisting before the change were contrary to strict natural right, and consequently unlawful*.

* For instance, the question whether Great Britain is obliged (treaties apart) to adopt the new principle, according to which neutral vessels make neutral goods, or whether she has a right to adhere to the ancient principle which is exactly opposed to it, depends on another question: to wit; which of the two principles is contrary to the rigour of the universal law of nations. See the DUKE OF NEWCASTLE'S *answer to* MR. MITCHEL.

LIST
OF THE
PRINCIPAL TREATIES
AND OTHER
PUBLIC ACTS,
FROM THE YEAR 1731, TO JUNE 1802.


*Under the respective Titles are indicated the Works
in which they are to be found.*


1731.

TREATY of Alliance between the Emperor Charles VI. and
 George II., King of Great-Britain, concluded at Vienna,
 March 16, 1731.

Dumont, Corps dipl. t. 8. p. 2. p. 213. Rousset, supplé-
 ment, t. 3. p. 2. p. 288. Idem, Recueil, t. 6. p. 13, 442.
 t. 17. p. 394. Lamberty, mémoires, t. 10. suppl. p. 198.
 Merc. hist. & pol. 1731. t. 1. p. 508. Faber, Europ.
 Staatskanzley, t. 58. p. 537. Jenkinson, t. 2. p. 318.
 Chalmers's Collection, t. 1. p. 310.

Tractatus inter Sacram Cæsaream Catholicam, Sacram Ca-
 tholicam & S. Reg. Britannicam Majestates; Viennæ Aus-
 triæ d. 22. Jul. 1731 conclusus.

Rousset, supplém. t. 3. p. 2. p. 307. Idem, Recueil, t. 6.
 A a 3 p. 193.

p. 193. Faber, *Europ. Staatskanzley*, t. 58. p. 570. Jenkinson, t. 2. p. 333. *Merc. hist. & pol.* 1731. p. 2. p. 213.

Convention de Famille entre la Maison de Medicis & le Roi d'Espagne, pour la Succession aux Etats du Grand-Duc ; faite à Florence, le 25 Juillet, 1731.

Rousset, supplément, t. 3. p. 2. p. 311.

Treaty of Alliance between the Electoral Courts of Hanover and Saxony, concluded at Dresden, the 3d August, 1731.

Rousset, supplément, t. 3. p. 2. p. 314. *Merc. hist. & pol.* 1731: p. 2. p. 319. Faber, *Europ. Staatskanzley*, t. 59. p. 660.

Renouvellement du Traité entre les Etats-Généraux & le Royaume d'Alger, 1731.

Europ. Mercurius, 1731. p. 2. p. 115.

Convention entre Chrétien VI. Roi de Danemarck & les Etats-Généraux, touchant différentes Disputes, le 3 Sept. 1731.

Lamberty, *mémoires*, t. 10. p. 120. *Europ. Merc.* 1731. p. 2. p. 174.

Convention between England and the Town of Bremen, concerning the Herring Trade, 17 Oct. 1731.

Chalmers's Collection, t. 1. p. 113.

1732.

Traité de Paix entre l'Empire de Russie & le Royaume de Perse, conclu le 21 Janv. 1732.

Rousset, supplém. t. 3. p. 2. p. 326. *Idem*, *Recueil*, t. 7. p. 457. *Merc. hist. & pol.* 1732. p. 2. p. 447. en Allemand dans Muller, *Samlung. Russ. Gesch.* t. 1. p. 154.

Schedule of the King of Spain to his Officers in America, forbidding the Commission of Outrages on English Ships, 28 Jan. 1732. .

Rousset, supplém. t. 3. p. 2. p. 327.

Décret

Décret du Pape Clément XII. pour ériger Ancône en Port franc, du 16 Févr. 1732.

Rousset, supplém. t. 3. p. 2. p. 327.

Accession des Etats-Généraux au Traité de Vienne du 16 Mars 1731, le 20 Févr. 1732.

Placaatboek van Brabant, t. 7. p. 543. Rousset, suppl. t. 3. p. 2. p. 287. Idem, Recueil, t. 6. p. 442.

Traité d'Alliance & de Garantie entre l'Empereur des Romains, l'Impératrice de Russie & le Roi de Danemarc, conclu à Copenhague, le 26 Mai 1732.

Rousset, supplément, t. 3. p. 2. p. 334. Idem, Recueil, t. 7. p. 464. Merc. hist. & pol. 1732. p. 2. p. 521.

Traité de Partage & d'Accommodement sur la Succession d'Orange, conclu entre Sa Majesté le Roi de Prusse & S. A. S. le Prince d'Orange & de Nassau, le 14 Mai & 16 Juin 1732.

Rousset, suppl. t. 3. p. 2. p. 335. Idem, Recueil, t. 8. p. 2. p. 408. Europ. Mercurius 1732, p. 2. p. 45. Merc. hist. & pol. 1732. p. 2. p. 162. Faber, Europ. Staatscanz. t. 61. p. 486.

Ordonnance des Etats-Généraux des Provinces-Unies pour défendre à leurs Sujets de prendre Part aux Compagnies des Indes étrangères, ou d'entrer à leur Service, le 24 Sept. 1732.

Merc. hist. & pol. t. 93. p. 596. Rousset, supplém. t. 3. p. 2. p. 409. Recueil, van Placaaten, t. 4. p. 413. Europ. Mercurius, 1732. p. 1. p. 189.

Déclaration du Roi Auguste II. de Pologne pour annoncer sa Paix avec la Couronne de Suède, donnée à Varsovie, le 7. Oct. 1732.

Merc. hist. & pol. t. 93. p. 568. Rousset, supplém, t. 3. p. 2. p. 45.

1733.

Traité d'Alliance entre l'Empereur Charles VI. & l'Electeur de Saxe, conclu le 16 Juill. 1733.

Wenck, cod. juris gent. t. 1. p. 700.

Traité d'Alliance entre les Rois de France & de Sardaigne, le 26 Sept. 1733.

Cité, Merc. hist. & pol. 1733. p. 2. p. 459, 479.

Traité d'Alliance entre les Rois de France, d'Espagne & de Sardaigne, signé à l'Escurial, le 25 Oct. 1733.

Cité, Merc. hist. & pol. 1733. p. 2. p. 581.

Convention, ou Acte de Neutralité pour les Pays-Bas Autrichiens, entre le Roi de France & les Provinces-Unies des Pays-Bas, le 24 Nov. 1733.

Europ. Mercurius, 1733. p. 2. p. 286. Rousset, Recueil, t. 9. p. 461. Merc. hist. & pol. 1734. p. 1. p. 105.

1734.

Treaty of Alliance and Subsidy between the Kings of Great Britain and Denmark, concluded Sept. 30, 1734.

Rousset, supplém. t. 3. p. 2. p. 498. (sous la date du 9 Sept.) Merc. hist. & pol. 1735. p. 1. p. 225. (sous la date du 19 Sept.) mais allégué par Chalmers's coll. t. 1. p. 64. en date du 30 Sept.

Traité d'Alliance Défensive entre le Roi & la Couronne de Suède & le Roi de Danemarck, le 24 Sept. & le 5 Oct. 1734.

Modæ, Utdrag, etc p. 171.

Treaty of Amity and Navigation, between the Empire of Russia and the Crown of Great Britain, concluded at St. Petersburg, Dec. 2, 1734.

Rousset, supplém. t. 3. p. 2. p. 495. Merc. hist. & pol. 1735. p. 1. p. 563. Loisirs du Chevalier d'Eon, t. 5. p. 325;

325; séparément imprimé en Allemand à St. Petersburg, fol. Jenkinson, supplement to the edit. of 1772, of Treaties, p. 75.

1735.

Convention entre le Danemarck & la Suède touchant les Postes, le 22 Janv. & le 2 Févr. 1735.

Extrait dans Schou, Chron. Reg. t. 3. p. 144.

Traité entre la France & la Suède, le 25 Juill. 1735.

Cité, Merc. hist. & pol. 1735, p. 2. p. 212.

Renouvellement du Traité d'Alliance du 22 Févr. 1724, entre l'Impératrice de Russie & le Roi de Suède, conclu à Stockholm, le 5 Août, 1735, avec les Articles séparés.

Modée, Utdrag. p. 181.

Traité d'Alliance entre le Roi de France & les Confédérés de Pologne & de Lithuanie, conclu à Versailles, le 18 Sept. 1735.

Rousset, supplém. t. 3. p. 2. p. 541. Rousset, Recueil, t. 11. p. 137.

Articles Préliminaires de Paix entre l'Empereur & le Roi de France, signés à Vienne, le 3 Oct. 1735, avec trois Articles séparés.

Wenck, cod. jur. gent. t. 1. p. 1. Rousset, supplém. t. 3. p. 2. p. 546. Faber, Europ. Staatskanz. t. 67. p. 761.

1736.

Acte d'Abdication du Roi de Pologne, Stanislas premier, signé à Königsberg, le 27 Janv. 1736.

Wenck, cod. jur. gent. t. 1. p. 8.

Déclaration de la Part de l'Empereur, sur la Paix avec le Roi d'Espagne & avec le Roi des Deux Siciles, signée à Vienne, le 30 Janv. 1736.

Wenck, cod. jur. gent. t. 1. p. 14.

Déclaration de la Part de la France sur la Paix de l'Empereur avec le Roi d'Espagne & avec le Roi des Deux Siciles, le 30 Janv. 1736.

Wenck, cod. jur. gent. t. 1. p. 15.

Convention entre l'Empereur & le Roi T. C. sur l'Exécution des Articles Préliminaires; signée à Vienne le 11 Avril 1736.

Rousset, supplém. t. 3. p. 2. p. 549, 590. Faber, Europ. Staatscanzeley, t. 68. p. 523. Wenck, cod. jur. gent. t. 1. p. 16.

Déclaration signée à Aranjuez le 15 Avril 1736, de la Part du Roi d'Espagne sur la Paix avec l'Empereur.

Wenck, cod. jur. gent. t. 1. p. 24.

Traité d'Accord entre le Roi de Danemarck & la Ville de Hambourg, avec un Article séparé, conclu le 28 Avril, 1736.

Wenck, cod. jur. gent. t. 1. p. 217, 230. Klefeker, Sammlung, Hamb. Verf, t. 9. p. 313.

Déclaration signée à Naples le 1er Mai 1736, de la Part du Roi des Deux Siciles sur la Paix avec l'Empereur.

Wenck, cod. jur. gent. t. 1. p. 25.

Acte signée à Vienne au Nom de la Czarine le 15 Mai 1736, sur ce qui dans les Articles Préliminaires concerne les Affaires de Pologne.

Wenck, cod. jur. gent. t. 1. p. 27.

Acte signée à Vienne au Nom du Roi de Pologne Auguste III. le 15 Mai 1736, sur ce qui dans les Articles Prélim. concerne les Affaires de Pologne.

Wenck, cod. jur. gent. t. 1. p. 31.

Avis de l'Empire touchant les Préliminaires signés avec la France, le 18 Mai 1736.

Neueste Sammlung der Reichs-Abschiede, t. 4. p. 424.

Wenck, cod. jur. gent. t. 1. p. 35.

Diplome de l'Empereur du 6 Juin 1736, pour la Cession du Navarois & du Tortonois, etc. au Roi de Sardaigne.

Wenck, cod. jur. gent. t. 1. p. 38.

Lettre patente du Roi de Danemarck pour rétablir la Liberté du Commerce avec la Ville de Hambourg, le 3 Juill. 1736.

Wenck, cod. jur. gent. t. 1. p. 236.

Mandatum Cæsareum de 7 Juillet 1736, ad feudorum Langarum Vasallos & Subditos.

Wenck, cod. jur. gent. t. 1. p. 43.

Déclaration de l'Empereur sur quelques Détails concernant la Paix entre Sa Majesté Impériale d'une Part, & les Rois d'Espagne & des Deux Siciles de l'autre, le 4 Août, 1736.

Wenck, cod. jur. gent. t. 1. p. 49.

Acte fait entre les Généraux des Armées de Sa Majesté Impériale & S. M. T. C. en Italie pour le Réglement de ce qui reste du Milanez, le 16 Août 1736.

Wenck, cod. jur. gent. t. 1. p. 131.

Accession du Roi de Sardaigne aux Préliminaires, le 16 Août 1736.

Wenck, cod. jur. gent. p. 1. p. 50.

Convention entre l'Empereur & le Roi T. C. pour la Cession & Remise actuelle du Duché de Lorraine au Roi de Pologne Stanislas I, le 28 Août 1736.

Wenck, cod. jur. gent. t. 1. p. 51.

Convention entre le Duc de Wurtemberg & le Comte de Bourg, sur le Payement de ce qui reste dû par les Terres d'Empire situées le long du Rhin, le 13 Nov. 1736.

Wenck, cod. jur. gent. t. 1. p. 136.

Diploma Regis Catholici de 21 Nov. 1736, pro cessione ducatum Parmæ & Placentiæ Cæsari & successionis eventualis Magni Ducatus Hetruriæ domui Lotharingicæ.

Wenck, cod. jur. gent. t. 1. p. 62.

Actes de la Czarine, du Roi de Pologne, & du Roi T. C. pour l'Agnition du Roi de Pologne, le 23 Nov. 1736.

Wenck, cod. jur. gent. t. 1. p. 69, 71, 73.

Diploma

Diploma Cæsareum pro cessione regnorum utriusque Siciliæ sicut & portuum litoralium Hetruriæ, regi utriusque Siciliæ, le 11 Dec. 1736.

Wenck, cod. jur. gent. t. 1. p. 74.

Diploma regis utriusque Siciliæ de 11 Dec. 1736, pro cessione ducatum Parmæ & Placentiæ Cæsari, & successionis eventualis Magni Ducatus Hetruriæ, domui Lotharingicæ.

Wenck, cod. jur. gent. t. 1. p. 80.

Acte de Cession du Duc de Lorraine des Duchés de Bas & de Lorraine, le 13 Déc. 1736.

Wenck, cod. jur. gent. t. 1. p. 86.

Traité de Paix & de Commerce entre le Roi de Suède & la République de Tunis, conclu à Tunis, le 23 Déc. 1736.

Modet, Utdrag. p. 190. Wenck, cod. jur. gent. t. 1. p. 446.

1737.

Traité de Commerce entre le Roi & la Couronne de Suède & la Porte Ottomane, signée à Constantinople, le 10 Janv. 1737.

Modet, Utdrag. p. 200. Wenck, cod. jur. gent. t. 1. p. 471.

Prise de Possession du Duché de Bar par les Commissaires de Sa Maj. le Roi Stanislas de Pologne, le 8 Fév. 1737.

Merc. hist. & pol. t. 102. p. 324. Rousset, supplém. t. 3. p. 2. p. 591.

Lettre du Grand-Vizir au Cardinal Fleury pour demander la Médiation de la France, & Lettre du Roi de France au Grand-Seigneur, du 1er Oct. 1737.

Laugier, hist. de la paix de Belgrade, t. 2. p. 265, 271.

Wenck, cod. jur. gent. t. 1. p. 398, 402.

Cartel

1738.

Cartel entre le Roi & la Couronne de Suède & le Roi de Danemarck pour l'Extradition des Déserteurs & des Criminels ; fait à Stockholm, le 10 Avril 1738.

Modee, Utdrag. p. 215.

Règlement de l'illustre Médiation pour la Pacification des Troubles de la République de Genève du 7 Avril & 8 Mai 1738.

Rousset, supplém. t. 2. p. 2. p. 601.

Traité d'Alliance entre S. M. T. C. & le Roi de Suède, le 10 Nov. 1738.

Wenck, cod. jur. gent. t. 2. p. 1.

Traité Définitif de Paix entre l'Empereur, l'Empire & le Roi de France, conclu à Vienne, le 18 Nov. 1731, avec les Ratifications de l'Empereur du 31 Déc. & de la France du 7 Janv.

Wenck, cod. jur. gent. t. 1. p. 88, 141, 146.

1739.

Declaration of the Spanish Ambassador to the English Ambassador, 10 Jan. 1739,

Wenck, cod. jur. gent. t. 1. p. 314.

Traité entre l'Empereur Charles VI. & le Roi de France concernant la Succession dans les Pays de Juliers & de Berg, le 13 Janv. 1739.

Cité, Reuss, T. Staatsanzeley, t. 13. p. 265.

Convention between the Kings of Spain and Great Britain, signed at the Pardo, on the 14th January 1739.

Nouv. extr. 1739, n. 18 supplém. Rousset, Recueil, t. 17. p. 2. p. 55. Merc. hist. & pol. 1739, p. 1. p. 295.

Wenck, cod. jur. gent. t. 1. p. 293. Jenkinson, t. 2. p. 339.

Déclaration

Déclaration des Ministres Plénipotentiaires de l'Empereur & du Roi Très-Chrétien, le 20 Janv. 1739.

Wenck, cod. jur. gent. t. 1. p. 148.

Acte d'Accession du Roi de Sardaigne à la Paix de Vienne, le 9 Mars, 1739.

Wenck, cod. jur. gent. t. 1. p. 149, 151, 152, 156.

Treaty between the King of Great Britain and the King of Denmark, signed March 14, 1739.

Chalmers's Collection, t. 1. p. 64.

Treaty of Accommodation, between the King of Great Britain, as Elector of Brunswick-Lunenbourg, and the King of Denmark, respecting the Bailiwick of Steinhorst, March 15, 1739.

Busching, Magazin, t. 8. Merc. hist. & pol. 1739, p. 1. p. 418.

Actes d'Accession du Roi d'Espagne & du Roi des Deux Siciles au Traité Définitif de Vienne, le 21 Avril 1739.

Wenck, cod. jur. gent. t. 1. p. 157, 172, 176, & t. 1. p. 185, 174, 179.

Actes d'Accession de l'Impératrice de Russie & du Roi de Pologne au Traité Définitif, le 26 Mai 1739.

Wenck, cod. jur. gent. t. 1. p. 181, 183, 190, 192, & t. 1. p. 185, 186, 191, 194.

Articles Préliminaires de Paix entre l'Empereur Charles VI. & le Sultan Turc Mahomed, le 1er Sept. 1739.

Wenck, cod. jur. gent. t. 1. p. 316, 322. Merc. hist. & pol. 1739, p. 2. p. 410. Umständliche Geschichte des Belgrader Friedens, 1790, t. 8. p. 257.

Convention sur l'Exécution des Préliminaires signés au Camp devant Belgrade, le 7 Sept. 1739.

Wenck, cod. jur. gent. t. 1. p. 323.

Traité Définitif de Paix entre l'Empereur & la Porte, à Belgrade en Servie, conclu le 18 Sept. 1739.

Laugier, histoire de la paix de Belgrade, t. 2. p. 294. Moser, Belgrader Friedensschluss mit Anmerkungen, p. 1. Wenck,

Wenck, cod. jur. gent. p. 1. p. 326. Umständliche Geschichte des Belgrader Fr. p. 322.

Traité de Paix entre la Russie & la Porte, conclu à Belgrade, le 18 Sept. 1739.

Laugier, hist. de la Paix de Belgrade, t. 2. p. 336. Wenck, cod. jur. gent. t. 1. p. 368.

Convention entre Sa Majesté de Toutes les Russies & l'Empire Ottoman, le 3 Oct. 1739.

Laugier, l. c. t. 2. p. 336. Wenck, t. 1. p. 388.

Déclaration remise à la Porte, par le Sieur Montmars, lors de l'Echange des Ratifications de la Paix, le 13 Oct. 1739.

Laugier, l. c. t. 2. p. 334. Wenck, cod. jur. gent. t. 1. p. 366.

Acte de Ratification du Traité de Paix entre la Russie & la Porte, le 16 Oct. 1739.

Laugier, l. c. t. 2. p. 359. Wenck, t. 1. p. 390.

Acte de Ratification de l'Empereur de la Paix de Belgrade, le 22 Oct. 1739.

Laugier, l. c. t. 2. p. 328, 333. Wenck, t. 1. p. 362. 365.

Convention lors de l'Echange des Ratifications de la Paix de Belgrade, le 5 Nov. 1739.

Laugier, l. c. t. 2. p. 330. Wenck, t. 1. p. 364.

Alliance Défensive entre Sa Maj. le Roi, & la Couronne de Suède & la Porte Ottomane, conclue à Constantinople, le 2 Déc. 1739.

Modée, Utdrag, p. 227. Wenck, cod. jur. gent. t. 1. p. 504. Moser, Versuch, t. 8. p. 219. Merc. h. & pol. 1740. t. 2. p. 42. en date du 22 Déc. & dans Laugier, hist. de la Paix de Belgrade, t. 2. p. 383. en François sous la fausse date du 19 Juill. 1740. en Allemand & Lat. dans Hempels, Staatslexicon, t. 9. p. 900.

Traité de Commerce entre le Roi de France & les Provinces-Unies des Pays-Bas, le 21 Déc. 1739.

Rousser, Recueil, t. 14. p. 447. Merc. hist. & pol. 1740. t. 1. p. 107. Groot Placaatboek, t. 6. p. 324. Recueil d.

Traaaten,

Traſtaaten, t. 2. n. 24. 25. Recueil van Zeezaken, d. 4. p. 496 & 535. Wenck, cod. jur. gent. t. 1. p. 414. Hempels, Staatslexicon, t. 9. p. 737.

Paſtum Conventum inter Ord. B. Fed. & Belgas Auſtriacos Deſertoribus & transfugis, 26 Dec. 1739.

Placaatboek v. Brabandt, t. 9. p. 148. 157. Placaatboek v. Vlaanderen, t. 4. p. 3. p. 2095. Groot Placaatboek, t. 7. p. 180.

Convention ſtipulée entre Sa Maj. Imp. de Toutes les Ruſſies & l'Empire Ottoman, dans l'Acte d'Echange des Ratiſications du Traité du 18 Sept. le 28 Déc. 1739.

Wenck, cod. jur. gent. t. 1. p. 393.

Déclaration d'Alliance entre Sa Maj. Imp. de Toutes les Ruſſies & Sa Maj. l'Emp. des Romains, conſignée par l'Amb. de Sa Maj. T. C. à la Sublime Porte lors de l'Echange des Ratiſications, le 28 Déc. 1739.

Wenck, cod. jur. gent. t. 1. p. 397.

Ordonnance du Grand Duc de Toſcane relativement au Commerce Neutre, le 28 Déc. 1739.

Moser, Verſuch, t. 10. p. 169. Merc. hiſt. & pol. 1740. t. 1. p. 189.

1740.

Paſtum Conventum inter Ordd. B. Fed. & Belgas Auſtriacos de militia urbe Dendremonda profugis, 5 Jan. 1740.

Groot Placaatboek, t. 6. p. 319.

Traité de Paix, de Commerce, & de Navigation, conclu à Conſtantinople, le 7 Avril, entre le Roi de Naples & de Sicile & la Porte Ottomane.

Merc. hiſt. & pol. 1740. t. 2. p. 10. Moser, Verſuch, d. E. V. R. t. 7. p. 540. Wenck, cod. jur. gent. t. 1. p. 519. en Allemand dans Hempels, Staatslexicon, t. 9. p. 75.

Convention entre les Généraux Autrichien & Turc touchant l'Echange des Ambaſſadeurs réciproques, le 5 Juin, 1740.

Merc. hiſt. & pol. 1740. p. 2. p. 162.

Traité

Traité entre la Russie & la Prusse pour le Renouvellement des anciennes Alliances, le 16 Déc. 1740.

Wenck, cod. jur. gent. t. 1. p. 529.

Capitulations, ou Traités anciens & nouveaux entre la Cour de France & la Porte Ottomane, renouvelés & augmentés l'an 1740.

Wenck, cod. jur. gent. t. 1. p. 538.

1741.

Convention entre Sa Maj. la Reine d'Hongrie & la Porte, le 2 Mars, 1741.

Laugier, histoire de la Paix de Belgrade, t. 2. p. 372.

Wenck, cod. jur. gent. t. 1. p. 585.

Traité conclu entre la Grande-Bretagne, & la Russie avec les Articles séparés, le 3 Avril, 1741.

Chalmers, t. 1. p. 2.

Traité de Paix & de Commerce entre le Roi & la Couronne de Suède & la République de Tripolis, conclu à Tripolis le 15 Avril, 1741.

Modée, Utdrag, p. 242. Wenck, cod. jur. gent. t. 2. p. 17.

Traité Préliminaire de Commerce & de Navigation entre S. M. T. C. & le Roi & la Couronne de Suède conclu à Versailles le $\frac{1}{2}$ Avril, 1741.

Modée, Utdrag, p. 239. Wenck, cod. jur. gent. t. 2. p. 5.

Code des Prises, t. 1. p. 375. Merc. hist. & pol. 1741. p. 2. p. 108.

Traité d'Alliance entre la France & l'Electeur de Bavière, le 18 Mai, 1741.

Moser, Versuch, t. 8. p. 115. (extrait.)

Treaty of Alliance between Great-Britain and Austria, 24th June, 1741.

Moser, Versuch, t. 10. p. 1. p. 18.

Ordonnance de la Suède concernant les Armateurs, le 28 Juill. 1741.

Hempels, Staatslexicon, t. 9. p. 765. Modée, Utdrag af
Publique Handlingar, t. 3. p. 1690.

Confirmation de la Paix de Belgrade par le Grand Seigneur, le 7 Sept. 1741.

Merc. hist. & pol. 1741. p. 2. p. 499.

Convention entre la France, l'Electeur de Saxe & celui de Bavière, le 19 Sept. 1741.

Moser, Versuch, t. 8. p. 116. 117.

Alliance entre la France & le Roi de Prusse, le 1er Nov. 1741.

Moser, Versuch, t. 8. p. 76.

1742.

Convention entre la Reine Marie Thérèse & Charles Emanuel, Roi de Sardaigne, le 1er Févr. 1742.

Rousset, Recueil, t. 18. p. 85. Wenck, cod. jur. gent. t. 1.
p. 672.

Articles Préliminaires de Paix entre le Roi de Prusse & la Reine d'Hongrie & de Bohême, à Breslau, le 11 Juin, 1742.

Wenck, cod. jur. gent. t. 1. p. 734.

Act of Guarantee of the King of Great-Britain, on the Peace of Breslau, 24th June, 1742.

Wenck, cod. jur. gent. t. 1. p. 781. Merc. h. & pol. 1742.
p. 2. p. 131.

Traité de Commerce entre Sa Maj. le Roi & la Couronne de Suède & Sa Maj. le Roi des Deux Siciles, conclu à Paris, le 30 Juin, 1742.

Modée, Utdrag. p. 251. Wenck, cod. jur. gent. t. 2. p. 100.
Imprimé séparément à Naples de l'Imp. Royale en Latin
& avec une traduction en Italien 4to. mais sans l'Article
séparé qui se trouve dans Modée, & de là dans Wenck.

Déclaration

Déclaration de Paix entre Sa Maj. la Reine de Hongrie & de Bohême, & Sa Maj. le Roi de Pologne, Electeur de Saxe, le 23 Juill. 1742.

Wenck, cod. jur. gent. t. 1. p. 717.

Traité Définitif de Paix entre Sa Maj. le Roi de Prusse & Sa Maj. la Reine d'Hongrie & de Bohême, signé à Berlin, le 28 Juill. 1742.

Rousset, Recueil, t. 18. p. 33. Merc. hist. & pol. 1750. p. 1. p. 335. Wenck, cod. jur. gent. t. 1. p. 739.

Traité de Commerce entre les Rois de France & de Danemarck pour 25 Ans, le 23 Août, 1742.

Wenck, cod. jur. gent. t. 1. p. 591. en Danois dans Schou Chron. Register, h. a.

Acte d'Accession de l'Impératrice de Toutes les Russies au Traité de Breslau, le 12 Nov. 1742.

Wenck, cod. jur. gent. t. 1. p. 782.

Treaty of Alliance between the Kings of Great-Britain and Prussia, 18 Nov. 1742.

Etat politique de l'Europe, t. 12. p. 173. Wenck, cod. jur. gent. t. 1. p. 640. Moser, Versuch, t. 8. p. 124. Merc. hist. & pol. 1743. p. 1. p. 228.

Schlesischer Grenz-Recess wie solcher von Ihro Kön. Majestät in Preussen und der Königin von Ungarn und Böhmen hierzu ernannten Commissarien errichtet worden, 6 Dec. 1742.

Büsching, Magazin, t. 10. p. 477. Wenck, cod. jur. gent. t. 1. p. 748.

Treaty of Alliance between the Empress of Russia and the King of Great-Britain, 11 Dec. 1742.

Wenck, cod. jur. gent. t. 1. p. 645. Moser, Versuch, t. 8. p. 133. Merc. h. & pol. 1743. p. 1. p. 686.

1743.

Traité Préliminaire de Paix entre l'Imp. de Russie & le Roi de Suède, conclu à Abo, le 16 Juin, 1743.

Modée, Utdrag, p. 274. Merc. h. & pol. t. 115. p. 289.

Geneal. hist. Nachrichten, p. 51. p. 248. Wenck, cod. jur. gent. t. 2. p. 31.

Traité Définitif de Paix entre Sa Maj. le Roi & la Couronne de Suède d'un Côté, & Sa Maj. l'Imp. de Russie de l'autre, conclu à Abo, le 7 Août, 1743.

Modée, Utdrag, p. 277. Europ. Fama, t. 102. p. 528.

Rousset, Recueil, t. 18. p. 64. Merc. h. & pol. t. 115. p. 452. Wenck, cod. jur. gent. t. 2. p. 36. Büsching, Magazin, t. 15. p. 179.

Treaty concluded at Worms, between His Britannic Majesty, the Queen of Hungary, and the King of Sardinia, 13 Sept. 1743.

Rousset, Recueil, t. 18. p. 83. Moser, Versuch, t. 18. p. 182. Merc. h. & pol. 1744. p. 1. p. 132. Jenkinson, t. 2. p. 58. (1772). t. 2. p. 355. (1785). Wenck, cod. jur. gent. t. 1. p. 677. Chalmers's Collection, t. 2. p. 321.

Traité d'Alliance entre la Reine d'Hongrie & de Bohême & le Roi de Pologne, comme Electeur de Saxe, le 20 Déc. 1743.

Wenck, cod. jur. gent. t. 1. p. 722. Merc. hist. & pol. 1744. t. 1. p. 65.

1744.

Déclarations réciproques entre les Cours de Suède & de Danemarck, Janv. 1744.

Moser, Versuch, t. 8. p. 416.

Traité d'Alliance entre la France & la Prusse, Avril, 1744.

Moser, Versuch, t. 8. p. 76.

Union

Union de Frankfort entre l'Empereur Charles VII, le Roi Frédéric de Prusse, EleËteur de Brandenbourg, l'EleËteur Palatin Charles Th  odor, & le Roi de Su  de Fr  d  ric, Landgrave de Hesse, le 22 Mai, 1744.

Rousset, Recueil, t. 18. p. 446. Thucelii, acte comit. publ.

1744. t. 2. p. 487. Wenck, cod. jur. gent. t. 2. p. 163.

Moser, Versuch, t. 10. p. 1. p. 29.

Compositio Veterum controversiarum Ostfris   qua pr  sidia Ord. B. Fed. ex Embda & Lieroot revocantur, 21 Aug. 1744.

Groot Placaatboek, t. 7. p. 565. Nouv. extraord. 1744. n.

67. Rousset, Recueil, t. 19. p. 123, 153. Europ. Mercurius, 1732. p. 2. p. 22.

Act of the English Parliament concerning Captures and Recaptures, 17 Geo. II. c. 34.

Runnington, t. 6. p. 568.

Convention entre le Roi de la Grande-Bretagne & les Prov. Unies des Pays-Bas, touchant le Partage des Prises & Reprises, le 25 Ao  t, 1744.

Recueil van Zeezaken, t. 5. p. 172. 191. 195. aussi p. 107. 129.

R  glement du Roi de France concernant les Prises faites sur Mer, & la Navigation des Vaisseaux neutres pendant la Guerre, le 21 Oct. 1744.

Code des Prises, t. 1. p. 408. Europ. Mercurius, 1744.

p. 2. p. 285. Recueil van Zeezaken, t. 5. p. 234. Nouv.

Extr. n. 47. 93. De Real, Science de Gouvernement, t. 5. p. 479.

1745.

Treaty of Quadruple Alliance, between the King of Poland, the Elector of Saxony, the King of Great-Britain, the Queen of Hungary and Bohemia, and the United Provinces of the Low Countries, signed at Warsaw the 8th Jan. 1745.

Rousset, Recueil, t. 18. p. 516. Merc. hist. & pol. 1745.

p. 1. t. 113. p. 285. Moser, Versuch, t. 8. p. 118. Nouv.

Extr. 1745. n. 19 s. Wenck, cod. jur. gent. t. 2. p. 171.

Articles Préliminaires de Paix entre Sa Maj. la Reine de Hongrie et de Bohême, et S. A. l'Electeur de Bavière, à Fussen, le 22 Avril, 1745.

Sammlung von Actis publicis unter Franz 1. p. 3. p. 355.

Merc. h. & pol. p. 118. p. 624. Wenck, cod. jur. gent. t. 2. p. 180.

Traité entre l'Autriche et le Roi de Pologne, Electeur de Saxe, le 18 Mai, 1745.

Moser, Versuch, t. 8. p. 180.

Traité d'Alliance Défensive entre la Suède et la Russie, conclu à St. Pétersbourg le 25 Juin 1745, avec l'Article séparé, le 25 Juin.—6 Juill.

Modee, Utdrag, p. 292. Wenck, cod. jur. gent. t. 2. p. 216.

Convention signed at Hanover, between the Kings of Great-Britain and Prussia, the 26th August, 1745.

Wenck, cod. jur. gent. t. 2. p. 191. Moser, Versuch, t. 10.

p. 2. p. 64. Merc. h. & pol. 1746. t. 120. p. 172.

Traité Définitif de Paix, de Réconciliation & d'Amitié entre Sa Maj. l'Impératrice R. de Hongrie et de Bohême et Sa Maj. le Roi de Prusse, signé à Dresde, le 25 Déc. 1745.

Wenck, cod. jur. gent. t. 2. p. 194 & les Auteurs cités pour le Document suivant.

Traité de Paix, de Réconciliation et d'Amitié entre Sa Maj. le Roi de France et Sa Maj. le Roi de Pologne, Electeur de Saxe, conclu à Dresde le 25 Déc. 1745.

Adelung pragm. Staatshist, t. 4. p. 50. Haymann neueröff-

netes Kriegs-und Friedens-Archiv, p. 5. p. 169. Rousset,

Recueil, t. 19. p. 432. Merc. h. et pol. 1745. t. 120.

p. 145. Moser, Versuch, t. 10. p. 2. p. 68. Wenck, cod.

jur. gent. t. 2. p. 207.

Décret du Roi de France portant Révocation du Traité de

Com-

Commerce conclu en 1739, avec les Prov. Unies des Pays-Bas, le 31 Déc. 1745.

Merc. h. & pol. 1746. t. 1. p. 1. p. 111 & 236. Nouv. extr. 1746. n. 4. 13. 14 Supplém.

1746.

Traité d'Alliance entre l'Autriche & la Russie (avec l'Extrait des Articles séparés), le 22 Mai, 1746.

Moser, Versuch, t. 8. p. 164. 175.

Convention entre la Reine de Hongrie et de Bohême et l'Electeur de Bavière, le 21 Juill. 1746.

Wenck, cod. jur. gent. p. 2. p. 229. Moser, Versuch, t. 8. p. 205.

Traité de Paix et de Commerce entre le Roi de Danemarck & le Royaume d'Alger, le 10 Août, 1746.

Schou, Chron. Register, t. 4. p. 28.

Capitulation provisionnelle de la République de Gênes en se rendant à l'Autriche, le 6 Sept. 1746.

Merc. h. et pol. 1746. p. 2. p. 386.

Act of Guarantee of Silesia, in Favour of the King of Prussia, by the King of Great-Britain (19 Sept.); with the Act of Acceptation of Oct. 30, 1746.

Wenck, cod. jur. gent. t. 2. p. 203. 205.

Subsidiary Treaty between the King of Great-Britain, the King of Poland, Elector of Saxony, and the United Provinces of the Low Countries.

Merc. h. & pol. 1746. p. 1. p. 425.

1747.

Traité entre le Nadir Shah, Empereur de Perse, et le Sultan Mahmoud, Empereur des Turcs, Janv. 1747

Wenck, cod. jur. gent. t. 2. p. 305. Histoire de Nadir Shah, t. 2. p. 180. Merc. hist. & pol. 1747. p. 2. p. 4.

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Cartel

Cartel entre les E. G. des Pr. Unies et le Roi de Suède comme Landgrave de Hesse, touchant les Déserteurs, le 21 Mars, 1747.

Nouv. Extr. 1747. n. 28.

Acte entre l'Autriche & la Porte qui perpétue la Paix de Belgrade, le 25 Mai, 1747.

Art. 2. de la Paix de 1791.

Traité d'Alliance Défensive entre Sa Maj. le Roi et la Couronne de Suède et le Roi de Prusse, conclu à Stockholm, le 1^{er} Mai, 1747, avec les Articles séparés.

Modée, Utdrag. p. 303. Rousset, recueil, t. 19. p. 486. Merc. hist. & pol. 1747. t. 123. p. 422. Nouv. extr. 1748. n. 16 suppl. Wenck, cod. jur. gent. t. 2. p. 235. Moser, Versuch, t. 8. p. 232.

Renouveaulement du Traité de Subside entre la France & la Suède, le 3 Juin, 1747.

Moser, Versuch, t. 8. p. 88.

Subsidiary Treaty between Great-Britain and Russia, the 12th June, 1747.

Moser, Versuch, t. 10. p. 1. p. 109. Merc. hist. & pol. 1747. t. 2. p. 526.

Treaty of Subsidy, by which the Emperor of Russia promises 30,000 men to Great-Britain and the United Provinces, the 19th and 30th November, 1747.

Nederl. Jaarboeken, 1748. p. 172. Nouvelles extraord. 1747. n. 93.

Instruction des Etats-Gén. concernant les Armateurs, le 11 Décembre, 1747.

Recueil van Zeezaken, t. v. p. 953. Nouvelles extraord. 1747. n. 103.

1748.

Treaty of Defensive Alliance between the Queen of Hungary and Bohemia, the Kings of Great-Britain and Sardinia,

dinia, and the United Provinces, the 26th of January, 1748.

Nederl. Jaarboeken, 1748. p. 176. Wenck, cod. jur. gent. t. 2. p. 410.

Traité de Commerce & de Navigation conclu entre Sa Maj. Frédéric V. Roi de Danemarck & de Norvège, &c. & Sa Maj. Charles Roi des Deux Siciles, à Madrid le 6 Avril, 1748. (Les Ratifications ont été échangées le 20 Août, 1748.)

Dohm Materialien für die Statistick 5te Lieferung, p. 335. Wenck, cod. jur. gent. t. 2. p. 275. Imprimé séparément en Italien, à Naples, de l'Imprimerie Royale, 1752. 4to. & en Fr. & Danois dans Schou Chron. Register h. a.

Preliminaries of the Treaty of Aix-la-Chapelle, signed between His Britannic Majesty, His most Christian Majesty, and the States General of the United Provinces, at Aix-la-Chapelle, the 30th April, 1748.

Rousset, Recueil, t. 20. p. 158. Vollständige Sammlung von Actis publ. unter Franz I. p. 466. Moser, Versuch, t. 10. p. 2. p. 84. & 476. Merc. h. & pol. t. 124. p. 560. Wenck, cod. jur. gent. t. 2. p. 310. Adelung Staatsgeschichte, b. 6. p. 13. Nederl. Jaarboeken, 1748. p. 415. Nouvelles Extraord. 1748. n. 46 suppl.

Déclaration des trois Puissances Contractantes pour rectifier le 1er & pour donner plus d'Extension au 2d Article des Préliminaires, le 21 Mai, 1748.

Wenck, cod. jur. gent. t. 2. p. 318. Neue Europ. Fama, t. 136. p. 1089.

Déclaration d'Accession conditionnelle de Sa Maj. l'Imp. Reine aux Articles Préliminaires, le 23 Mai, 1748.

Wenck, cod. jur. gent. t. 2. p. 323. Moser, Versuch, t. 10. p. 2. p. 437. Merc. hist. & pol. p. 125. p. 342, 344. N. E. n. 69 suppl.

Déclaration des Ministres Plénipotentiaires aux Conférences d'Aix-

d'Aix-la-Chapelle relative au 2d Article des Préliminaires, le 31 Mai, 1748.

Wenck, l. c. t. 2. p. 320. Nouv. extr. 1748. n. 69 suppl. Accessions de Sa Maj. Catholique, & de la Rép. de Gènes, & Acceptation, le 28 Juin, 1748.

Wenck, cod. jur. gent. t. 2. p. 326. 327. 329. Merc. hist. & pol. p. 125. p. 70, 76.

Convention au Sujet des Places conquises dans les deux Indes & des Prises faites en Mer, le 8 Juill. 1748.

Wenck, cod. jur. gent. p. 2. p. 333. Merc. h. & pol. p. 125. p. 225. Nouv. extraord. 1748. n. 69 suppl. Moser, Versuch, t. 10. p. 2. p. 476.

Traité d'Association entre les Cercles antérieurs de l'Empire en Forme de Recès, le 27 Juill. 1748.

Hempels Staatslexicon, t. 2. p. 374.

Convention des trois Puissances Contractantes par Rapport à la Retrogradation des Troupes Russes, le 2 Août, 1748.

Wenck, cod. jur. gent. t. 2. p. 335. Merc. hist. & pol. p. 125 p. 335. Nouv. extr. 1748. n. 69 suppl.

Édit du Roi de Danemarck concernant le Salut de Mer, le 11 Août, 1748.

Merc. hist. & pol. 1748. p. 2. p. 171. Nouv. Extraord. 1748. n. 64 suppl.

Règlement des Limites entre la Gueldre & l'Evêché de Munster, le 28 Août, 1748.

Nederl. Jaarboeken, 1748. p. 796.

Traité de Paix & de Commerce entre l'Empereur comme Grand Duc de Toscane & le Dey d'Alger, le 7 Oct. 1748.

Vollständige Sammlung von Actis publ. unter Franz I. t. 8. p. 227. Merc. h. & pol. t. 125. p. 606 extr.

Definitive Treaty of Peace between the King of Great-Britain, the Queen of Hungary and Bohemia, on the one part, and the Most Christian King on the other; as also between the King of Great-Britain, the Empress Queen, and the King of Sardinia, on the one part, and the King of Spain

on

on the other, as well as the States General of the United Provinces of the Low Countries, as Auxiliaries of the King of Great-Britain; and the Duke of Modena and the Republic of Genoa, as Auxiliaries of the King of Spain, concluded at Aix-la-Chapelle, Oct. 18th, 1748.

Rousset, Recueil, t. 20. p. 179. Faber E. Staatskanz. t. 99. p. 226. Adelung Staatshistorie, t. 6. Beyl. p. 44. Hist. Geneal. Nachrichten, t. 2. p. 688. Merc. hist. & pol. t. 125. p. 495. Moser, Versuch, t. 10. p. 89. Wenck, cod. jur. gent. t. 2. p. 310. Nouv. extr. 1748. n. 91 suppl. En Anglois, Jenkinson, Coll. vol. 2. p. 370 (1785); en Hollandois, Nederl. Jaarboeken, 1748. p. 1065.

Private Convention between the King of Great-Britain and the Empress Queen, respecting the Execution of the Definitive Treaty, the 24th Oct. 1748.

Rousset, Recueil, t. 20. p. 205. Adelung, l. c. t. 6. b. p. 73. Wenck, cod. jur. gent. t. 2. p. 361.

Edit du Roi de Danemarck portant Confirmation & Ampliation des Privilèges pour les Etrangers, le 29 Nov. 1748.

Merc. hist. & pol. 1749. p. 1. p. 85.

Breve Benedicti XIV. quo Lusitanis Regi Joanni V. ejusque Successoribus Fidelissimi titulus adsignatur; Romæ, 23 Dec. 1748.

Wenk, cod. jur. gent. p. 2. p. 432. Mémoires de Montgon, t. 8. Pièces justif. n. 19. p. 117; Merc. h. & pol. t. 126. p. 594. Moser, Versuch, t. 1. p. 269. Adelung Staatsgesch. t. 7. p. 17.

Edit du Roi de Portugal concernant les Privilèges des Ministres Etrangers, Déc. 1748.

Nouv. extr. 1749. n. 10 suppl.

1749.

Convention entre les Commissaires de S. M. Très-Chrétienne de Sa Maj. l'Impératrice Reine d'Hongrie & de Bohême & des Seigneurs Etats-Généraux des Pr. Unies, concernant l'Evacu-

L'Evacuation des Pays-Bas, faite à Bruxelles, le 11 Janv. 1749.

Merc. hist. & pol. t. 126. p. 104. Moser, Versuch, t. 10. p. 2. p. 481. Genéal. hist. Nachrichten, t. 134. p. 107. Wenck, cod. jur. gent. t. 2. p. 428. Rousset, Recueil, t. 20. p. 248. Nederl. Jaarb. 1749. p. 212.

Convention principale entre l'Impératrice Reine & le Duc de Modène, & la République de Gènes, touchant l'Evacuation des Pays-Bas, faite à Nice, le 21 Janv. 1749.

Merc. hist. & pol. t. 126. p. 127. Moser, Versuch, t. 10. p. 2. p. 501. Wenck, cod. jur. gent. t. 2. p. 430.

Edit du Roi de Sardaigne renfermant les Privilèges pour les Ports-Francis de Nizza, St. Ospicio & Villa-Franca, le 12 Mars, 1749.

Cité, Hempels, Staatslexicon, t. 1. Préface.

Décret des Etats d'Hollande portant Restriction de l'Immunité des Impôts pour les Ministres Etrangers, le 28 Juin, 1749.

Groot Placaatboek, t. 7. p. 550.

Articles Préliminaires entre Frédéric V. Roi de Danemarck, & le Prince Royal de Suède, Adolphe Frédéric, le 3 Août, 1749.

Cités dans le traité définitif du 25 Avril, 1750.

Traité entre le Roi de France & la République de Genève, pour régler les Limites, le 15 Août, 1749.

Merc. h. & pol. t. 127. p. 523. Moser, Versuch, t. 5. p. 225. Wenck, cod. jur. gent. t. 2. p. 438.

Convention entre Sa Maj. Très-Christienne & S. M. de Danemarck qui proroge l'Exécution du Traité de 1742, le 30 Sept. 1749.

Code des Prises, t. 1. p. 470.

1750.

Traité des Limites entre l'Espagne & le Portugal au Sujet de leurs Possessions en Amérique, le 13 Janv. 1750.

Genéal. hist. Nachrichten, 1750. p. 663. 1756. p. 301.

Treaty

Treaty of Peace and Amity between the King of Great-Britain and Mulay Ismael and Mulay Abedela, Emperor of Morocco, concluded at Fez, 15th Jan. 1750, with the additional Articles of the 1st Feb. 1751.

Jenkinson's Collection, vol. 3. p. 5. Wenck, cod. jur. gent. t. 2. p. 434.

Edit des Etats-Généraux, touchant la Manière de saluer les Vaisseaux de l'Ordre de Malthe, le 19 Fév. 1750.

Recueil van Zeezaken, t. 6. p. 367. Moser, Versuch, t. 2. p. 493.

Tractat zwischen dem Könige Friederich V. von Dänemarc und dem Schwedischen Thronfolger Herzog Adolph Friederich von Hollstein, über die zukünftige Vertauschung des Herzoglich-Gottorpischen Hollsteins gegen die Graffschaften Oldenburg und Delmenhorst. Copenhagen, den 25 April, 1750.

Urkunden und Materialien zur Kenntniss und Geschichte der Staatsverwaltung nordischer Reiche, p. 197. Wenck, cod. jur. gent. t. 2. p. 472.

Leih-und Pfand-Vergleich zwischen Hollstein und der Stadt Hamburg, avec 2 Art. sép. Mai 6, 1750.

Klefscher, Sammlung Hamb. Verfass. t. 9. p. 343.

Act of Guarantee of the King of Great-Britain respecting the Peace of Dresden, 14th July, 1750.

I. I. Moser, Staatsarchiv, 1751. t. 3. p. 119. Wenck, cod. jur. gent. t. 2. p. 527.

Subsidiary Treaty between the King of Great-Britain, Elector of Brunswick Lunenburg, and their High Mightinesses the States General of the United Provinces, on the one part, and the Elector of Bavaria on the other, at Hanover, 22d Aug. 1750.

Moser, Versuch, t. 8. p. 153. Merc. h. & pol. 1750. t. 2. p. 354. Wenck, cod. jur. gent. t. 2. p. 457. Rousset, Recueil, t. 20. p. 225. Nederl. Jaarb. 1751. p. 74, 75. Nouv. extr. 1750. n. 72. 1751. n. 17.

Convention entre les deux Puissances maritimes, la Cour de Vienne & l'Electeur de Bavière sur le Duché de Mirandole & le Marquisat de Concordie, le 22 Août, 1750.

Wenck, cod. jur. gent. t. 2. p. 461.

Convention between the Kings of Great Britain and Spain respecting the Execution of the XVIth Article of the Treaty of Aix-la-Chapelle, concerning the Assiento, at Madrid, 5th Oct. 1750.

Rousset, Recueil, t. 20. p. 349. Merc. hist. & pol. t. 13. p. 57. N. Geneal. hist. Nachr. t. 1. p. 806. en Angl. Collection of Treaties, (1772) vol. 2. p. 107. (1785) t. 2. p. 410. Wenck, cod. jur. gent. t. 2. p. 464. Nouv. extraord. 1750, n. 104, supplém. Moser, Versuch. t. 2. p. 508.

Traité de Subside conclu séparément entre l'Electeur de Bavière & les Etats-Généraux des Provinces-Unies, le 5 Oct. 1750.

Nederl. Jaarboeken, 1751, p. 73.

1751.

Additional Articles of Peace and Subsidy between the King of Great Britain and the Emperor of Morocco, 1st Feb. 1751.

Le Traité du 15 Janv. 1750.

Convention entre l'Autriche & la République de Venise concernant le Patriarchat d'Aquileja, Févr. 1751.

Inséré dans la bulle confirmatoire du Pape, du 6 Juill. 1751. voyez plus bas.

Acte de Garantie de la Paix de Dresde de la Part de l'Empire, le 15 & 29 Mai, 1751.

J. J. Moser, Staatsarchiv, 1751, p. 3. p. 118, 128. Wenck cod. jur. gent. t. 2. p. 529, 535.

Additional

Additional Article to the Treaty between the King of Great Britain and the Kingdom of Algiers, 3d June, 1751.

Jenkinson, vol. 3. p. 29. Wenck, cod. jur. gent. t. 2. p. 592.

Chalmers's Collection, t. 2. p. 390.

Bulla S. P. Benedicti XIV. quæ conventio inter Impératricem Reginam Mariam Theresiam, Austriæ Archiducem & Rempubicam Venetam inita de abolendo Patriarchatu Aquilejensi, &c. confirmatur & perficitur Romæ, d. 6 Jul. 1751.

Wenck, cod. jur. gent. t. 2. p. 506. Magnum Bullarium Romanum, t. 18. p. 235.

Subsidiary Treaty between the King of Poland, Elector of Saxony, on the one part, and the King of Great Britain and the States General of the United Provinces, on the other, Sept. 13, 1751.

Merc. hist. & pol. t. 132. p. 301. Moser, Versuch, t. 7.

p. 149. Wenck, cod. jur. gent. t. 2. p. 593. Ned Jaar-

boek, 1752, p. 77. Nouv. Extr. 1751, n. 96. 1752, n. 18.

Renouvellement de la Convention du 2 Févr. 1735, entre la Suède & le Danemarck, touchant les Postes, le 6 & 17 Sept. 1751.

Cité dans Schou, Chron. Reg. t. 3. p. 144.

Treaty of Peace and Commerce between the King of Great Britain and the Town and Kingdom of Tripolis, 19 Sept. 1751.

Jenkinson, t. 3. p. 15. Wenck, cod. jur. gent. t. 2. p. 573.

Chalmers's Collection, t. 2. p. 422.

Traité des Limites entre le Roi de Suède & le Roi de Danemarck, fait à Stroomstadt, le 21 Sept. (2 Octob.) 1751.

Modee, Utdrag. p. 308. (S.) Wenck, cod. jur. gent. t. 2.

p. 598. (S. & A.) Büsching, Magazin. t. 2. p. 287. (A.)

& dans Schou, Chronol. Register (D.) mais allégué sous la date du 7 & 18 Octobre.

Treaty

Treaty of Peace and Commerce between Great Britain and the Government of Tunis, concluded Dec. 8, 1751.

Jenkinson, (1785) t. 3. p. 22.

Traité de Paix entre Sa Maj. le Roi de Danemarck & le Begler Bey du Royaume de Tunis; conclu le 8 Déc. 1751.

Dohm, Materialien für die Statistik 5te Lieferung, p. 439.
Abtheilungs-Vergleich zwischen der Krone Frankreich und dem Fürstlichen Hause Salm-Salm, le 21 Déc. 1751.

Die durch die Französischen Nationalschlüsse dem Hause Salm zugefügte Kränkungen, 1793. fol. Beylagen, n. 2. p. 2.

Traité d'Accommodement entre la République de Gênes & l'Isle de Corse par la France.

Merc. hist. & pol. 1751. t. 2. p. 404. Moser, Versuch, t. 5. p. 409.

1752.

Traité de Paix, de Navigation & de Commerce entre le Roi de Danemarck & le Dey de Tripolis, le 22 Jan. 1752.

Abrégé en Danois dans Schou, Chron. Reg. t. 4. p. 197.

Convention entre la République de Venise & l'Impératrice Reine sur les Limites du Milan & de Crème, le 10 Avril, 1752.

Cité, dans Wenck, Geschichte der Oesterreichischen Staaten. t. 1. p. 198.

Traité d'Alliance entre l'Impératrice Reine de Hongrie & de Bohême, & les Rois d'Espagne & de Sardaigne, conclu à Aranjuez, (auquel a accédé le Duc de Parme & le Roi des Deux Siciles) le 14 Juin, 1752.

Merc. hist. & pol. t. 133. p. 282. (L. & F.) Wenck, cod. jur. gent. t. 2. p. 707. (L. & F.) Moser, Versuch, t. 8. p. 195. (Fr.)

Trattato per il regolamento de' confini fra Sua Maesta l'Impératrice Regina, &c. Duchessa di Milano, &c. e i lodevoli

voli Dodeci Cantoni Elvetici dominanti di qua de' Monti; accordato nel Congresso di Varese & rispettivamente Ratificato. Con un Articolo separato per le rappresaglie, le 2 Août, 1752.

Imprimé séparément in folio.

Traité de Paix & de Commerce, entre Sa Majeste l'Empereur de Maroc & les Etats-Généraux, des P. U. des P. B. le 21 Nov. 1752.

Vervolgh van het Recueil der Tractaten, n. 26, 30. Wenck, cod. jur. gent. t. 2. p. 688. Recueil van Zeezaken, t. 6. p. 822, 830. Nederl. Jaarb. 1753, p. 16, 859. (tous en Hollandois.)

Edit du Roi de Suède portant Abolition du Droit d'Aubaine, 1752.

Moser, Versuch, t. 6. p. 64.

1753.

Convention Préliminaire de Commerce entre Louis XV. Roi de France, & Frédéric II. Roi de Prusse, à Paris, le 14 Févr. 1753.

Wenck, cod. jur. gent. t. 2. p. 722.

Bulla Benedicti XIV. qua privilegia Ordini Equitum Melitensium a superioribus summis Pontificibus ipsoque Benedicto concessa renovantur, confirmantur & augentur, le 12 Mart. 1753.

Wenck, cod. jur. gent. t. 2. p. 726.

Friedens-Tractat zwischen den König von Dänemarc und dem Kaiser von Marocco, Juin, 1753.

Adelung, Staatsg. t. 7. p. 354.

Erklärung über den zu Ostiglia zwischen Oesterreich und Venedig geschlossenen Grenz-Tractat, le 9 Juin, 1753.

Le Bret, Magazin, t. 4. p. 414.

Traité de Commerce entre Sa Maj. le Roi des Deux-Siciles & les Etats-Généraux des Provinces-Unies, le 27 Août, 1753.

Vervolgh van het Recueil, n. 27, 28. (F. & H.) Wenck, cod. jur. gent. t. 2. p. 753. (F.) Merc. hist. & pol. 1753. vol. 2. p. 243. Moser, Versuch, t. 7. p. 578. (F.) Nöj. derl. Jaarboeken, 1753. p. 72. (H.) Recueil van Zeezaken d. 6. p. 873.

Renouvellement du Traité de 1739, entre la Suède & la Porte, le 27 Août, 1753.

Moser, Versuch, t. 8. p. 219.

Concordat entre le Roi d'Espagne & le Pape, 1753.

Le Bret, Vorlesungen über die Statistick, t. 2. p. 353. & dans Adelung, Staatsgeschichte, b. 7. p. 364, & suivans.

Traité de Commerce entre le Roi de Sardaigne & le Duc de Modène, 1753.

Moser, Versuch, t. 7. p. 576.

Tabulæ permutatoriarum Dynastiæ Turnhout facta juris Brabantino-Austriaci, 1753.

Merc. hist. & pol. 1753, p. 1. p. 473.

Traité entre l'Impératrice Reine & le Duc de Modène sur la Succession dans ce Duché, 1753.

Wenck, Geschichte der Oesterr. Staaten, p. 206. Extrait dans Moser, Versuch, t. 8. p. 210.

1754.

Tabula, qua Princeps Anna, Vidua Wilhelmi IV. Gubern Belg. ab Rege Borussiae emit omnia bona & Dynastias, ex Pacto divisionis in Hollandia 1792. Regi assignata, pro summa 705,000 Fl. le 11 Janv. 1754.

Europ. Merc. 1754, t. 1. p. 253. Nederl. Jaarboeken 1754, p. 310. (H.) Merc. hist. & pol. 1754. p. 1. p. 293. Nouv extr. 1754. n. 25. (F.)

Traité.

Traité de Partage & d'Echange entre le Roi de Sardaigne & la République de Gênevè, à Turin, le 3 Juin, 1754.

Merc. hist. & pol. 1754, t. 2. p. 20. Moser, Versuch, t. 5. p. 356.

1755.

Edict des Etats-Généraux des Provinces-Unies, touchant les Algériens pris, leurs Vaisseaux & leur Navigation, le 21 Avril 1755.

Nederl. Jaarb. 1755, p. 206. Nouv. extr. 1755; n. 33.

Treaty between His Britannic Majesty and the Landgrave of Hesse-Cassel, signed at Hanover, 18 June, 1755.

Jenkinson, (1772) vol. 2. p. 154. (1785) vol. 3. p. 47. (A.)
Teutsche Kriegskänzeley, t. 9. p. 332.

Treaty between His Britannic Majesty and Her Imperial Majesty of all the Russias, signed at Petersbourg, 19th and 30th Sept. 1755.

Jenkinson, (1772) t. 2. p. 137. (1785) t. 3. p. 30. Extrait dans Moser, Versuch, t. 8. p. 145.

1756.

Private Subsidiary Treaty between the Kings of Great Britain and Prussia, concluded at Westminster, 16th Jan. 1756, with the separate Article.

Jenkinson, (1772) t. 2. p. 160. (1785) t. 3. p. 54. (F. & Angl.) Faber, Europ. Staatskanzley, t. 110. p. 657. (A.)
Moser, Versuch, t. 8. p. 129. (A.)

Declaration of their Britannic and Prussian Majesties, on the Subject of the Payment of the Debts in Silesia, 16th Jan. 1756.

Jenkinson, (1785) t. 3. p. 58.

Subsequent Treaty between Great-Britain and the King of Prussia, at Whitehall, 16th Feb. 1756.

Merc. hist. & pol. 1756. t. 1. p. 191.

Kayserl. Maj. und der Durchlauchtigen Pforte; geschlossen zu Constantinopel den 14 Oct. 1756.

Dohm, Materialien 4te Lief. p. 421. Schou, Chron. Register. h. a.

Ord. des Etats-Gén. des Prov.-Unies, touchant la Non-Admission des Prises des Puissances Belligérantes dans leurs Ports, le 3 Nov. 1756.

Recueil van Zeezaken, t. 7. p. 372. Merc. hist. & pol. 1756, t. 2. p. 785. Nouv. Extr. 1756. n. 91. Moser, Versuch, t. 10. p. 1. p. 317.

Convention entre Sa Maj. l'Impér. Reine & le Roi de France, touchant l'Extradition des Déserteurs, à Vienne, le 16 Oct. 1756.

Moser, Versuch, t. 7. p. 144.

Déclaration secretissime relative à la Détermination du Casus Federis du Traité d'All. entre la France & la Russie, à St. Petersbourg, 1756.

Peyssonnel, situation pol. p. 36.

Act of the English Parliament concerning Captures and Recaptures.

Runnington, stat. at large, vol. 7. p. 708. L'extrait des instructions pour les armateurs, Merc. hist. & pol. 1756, t. 2. p. 300.

1757.

Traité entre l'Autriche & la France, le 1 Mai, 1757.

Politique de tous les Cabinets, t. 2. p. 176.

Convention concluded at Closter-Zeven, between the Duke of Cumberland and Marshal Richelieu, 9th Sept. 1757.

Teutsche Kriegscanzeley, vol. 4. p. 634. Moser, Versuch, t. 10. p. 1. p. 185. Merc. hist. & pol. 1757. p. 2. p. 423. Adelung, Staatsgeschichte, t. 8. p. 393.

Tractat tusschen haar Hoog mogende de Heeren Staaten

General der Vereinigde Nederlande en de Regeeringe van Algiers, d. 23 Nov. 1757.

Vervolgh van het Recueil, n. 29. Nedert Jaarb. 1758. p. 353. (H.) Recueil van Zeezaken; d. 7. p. 704. Nouv. Extraord. 1758. n. 30. (F.)

T Trattato di Commercio fra la santa sede e la Lombardia Austriaca, le 30 Nov. & 7 Dec 1757.

Imprimé à Milan, in fol. 1758, 62 pages.

Édit du Roi de Prusse contre les Pirates de Mer, le 9 Déc. 1757.

Merc. hist. & pol. 1758. t. 1. p. 203.

Édit du Grand Duc de Toscane, concernant le Commerce neutre, 1757.

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1758,

Treaty between the Kings of Great-Britain and Prussia, 11th April, 1758, with a Declaration.

Jenkinson (1772.) t. 2. p. 166 168. (1763.) t. 3. p. 60. (F. & Angl.) T. Kriegscanzeley, t. 7. p. 41. Moser, Versuch, t. 10. p. 1. p. 22. (A.)

Convention entre la Suède & la Russie, le 27 Avril, 1758.

Moser, Versuch, t. 8. p. 238.

Convention between His Britannic Majesty and the King of Prussia, at London, Dec. 7, 1758.

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Traité d'Alliance entre l'Impératrice Reine & le Roi de France, à Versailles, le 7 Déc. 1758.

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Extrait

Extrait plus étendu dans "la Politique de toutes les Cours de l'Europe," t. 1. p. 427—437.

Bulle des Pabsts wo er der K. Königin den Titel Apostol. Majestät beylegt, 1758.

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1759.

Subsidiary Treaty between the King of Great-Britain and the Landgrave of Hesse-Cassel, 17th Jan. 1759.

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Nouv. extr. 1759. n. 44.

Edit du Roi de Suède, concernant la Navigation des Paissances neutres, le 25 Avril, 1759.

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Leih-und Freundschafts-Vergleich zwischen der Krone Dänemarc und der Stadt Hamburg, 6 Juill, 1759.

Klefeker, Sammlung Hamb. Verfassungen, t. 9. p. 327.

Cartel zwischen dem Russischen und Preussischen Hofe, 15 Oct. 1759.

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Subsidiary Treaty between His Britannic Majesty and the King of Prussia, 9th Nov. 1759.

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Traité entre la France & la République de Genève, à Paris, le 21 Nov. 1759.

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Convention between England and the Republic of Geneva,
at Paris, 21 Nov. 1759.

Nouv. Extraord. 1760, n. 82.

Treaty of Peace and Amity between the English Governor of
South Carolina and Attakullskulla, Deputy of the Chero-
kee Nation. Fort St. George, Dec. 26, 1759.

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Convention entre le Roi d'Espagne & le Roi de Sardaigne,
Duc de Savoye, touchant les Duchés de Parme & de
Plaisance, 1759.

Convention entre l'Imp. Reine & l'Espagne, 1759.

Convention entre la Russie & le Duc de Courlande, 1759.

1760.

Gränzvergleich zwischen dem Könige von Frankreich und
dem Kön. von Sardinien, 24 Mars, 1760.

Neue Gen. Hist. Nachrichten, t. 147. p. 67.

Ampliatie tot het Traetat van Vreede tuschen haar Hoogm.
de H. S. G. d. vereenigde Nederlande en den Dey der
Regeering van Algiers, 26 May, 1760.

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d. 8. p. 556.

Subsidiary Treaty between the Kings of Great-Britain and
Prussia, 28 Dec. 1760.

Jenkinson (1772) vol. 2. p. 168. (1785) t. 3. p. 70.

1761.

Traité d'Amitié & de Commerce entre le Roi de Prusse & la
Porte Ottomane, le 22 Mars, 1761.

Martens, Recueil de Traités, &c. t. 3. p. 194.

Treaty of Peace and Commerce between the King of Great-
Britain and the Emperor of Morocco, August 1, 1761.

Martens, t. 4. p. 1.

Traité

Traité d'Amitié & d'Union entre les Rois Très-Chrétien & Catholique, ou Paëte de Famille, le 15 Août, 1761.

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Convention entre le Roi de Prusse & le Duc de Meclembourg, Dec. 1762.

Arckenholz, Geschichte des 7 jährigen Krieges, p. 286.

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Lettres Patentes du Roi de France portant Abolition du Droit d'Aubaine en Faveur de la Noblesse immédiate de l'Empire, & Reversales donnés par celle-ci, Févr. 1769.

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Décret salvatoire de l'Empereur en Faveur du Roi de Suède comme Duc de Holstein, au Sujet de l'Echange des Etats de

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Agreement between the English East-India Company and the Nabob Ausuf ul Dowlah, 21 May, 1775.

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Edict du Roi de Suède, par lequel il déclare le Port de Marstrand être à l'avenir Port Franc, le 14 Oct. 1775.

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Acte de Renonciation de l'Ordre de Malthe à l'égard des Terres de l'Ordination d'Ostrog; avec la Bulle confirmatoire du Pape, le 14 Oct. 1775.

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De Steck, Essai sur les Consuls, p. 479.

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* The Emperor refusing to ratify their convention, without certain modifications, (as appears by date of March 10, 1791,) the three allied powers kept back their ratification, unwilling to allow of the proposed restrictions.

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* This proclamation corresponds (*mutatis mutandis*) with that of the 12th Jan. 1781.

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F I N I S.

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